

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,800

I. IRVING DAVIDSON

Appellant,

v.

874

MARSHALL B. COYNE
CHARLES ROSE
EDWARD C. BALTZ
THORNTON W. OWEN

Appellees.

*Appeal from the United States District Court
for the District of Columbia*

FRIEDLANDER & FRIEDLANDER

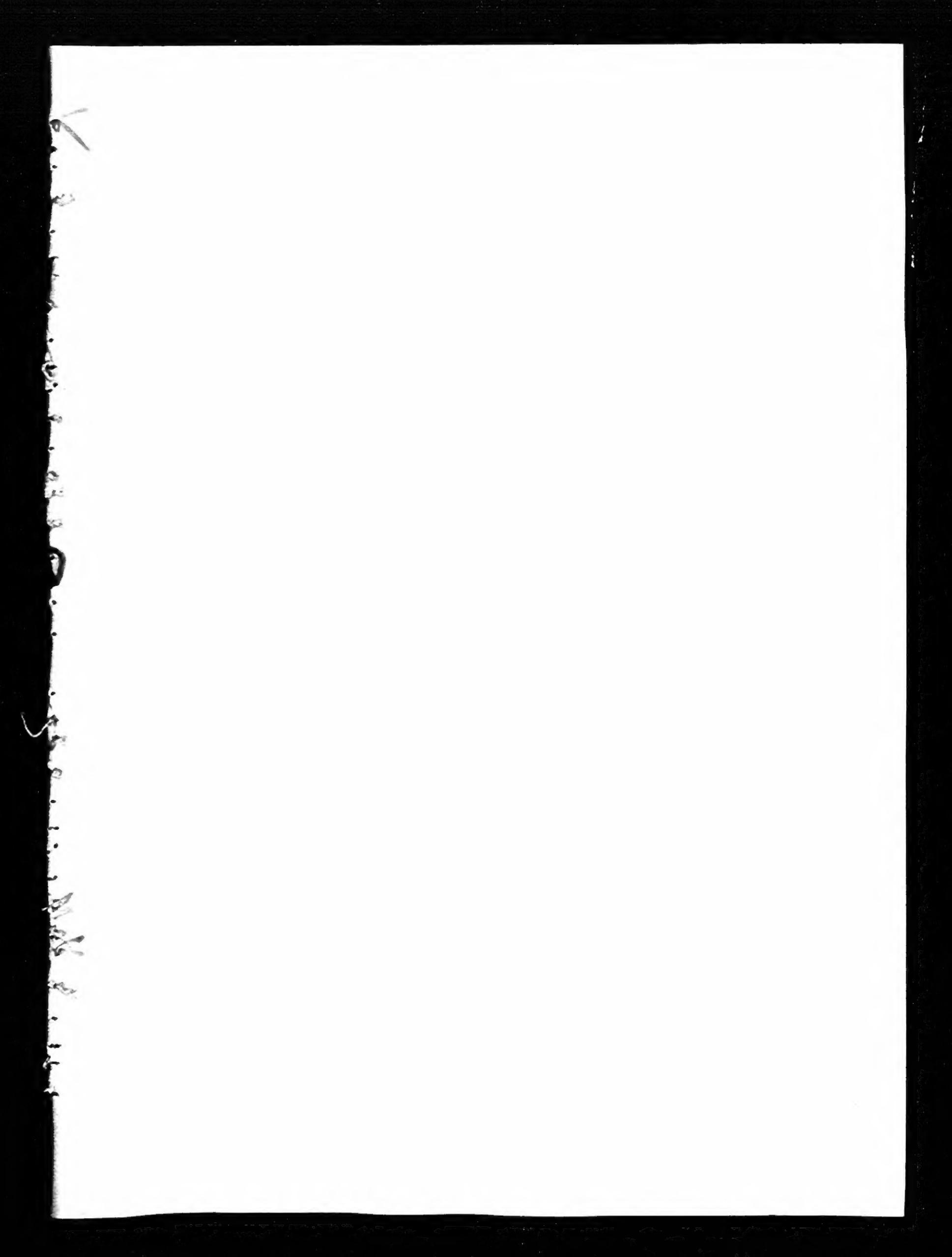
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United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 7 1964

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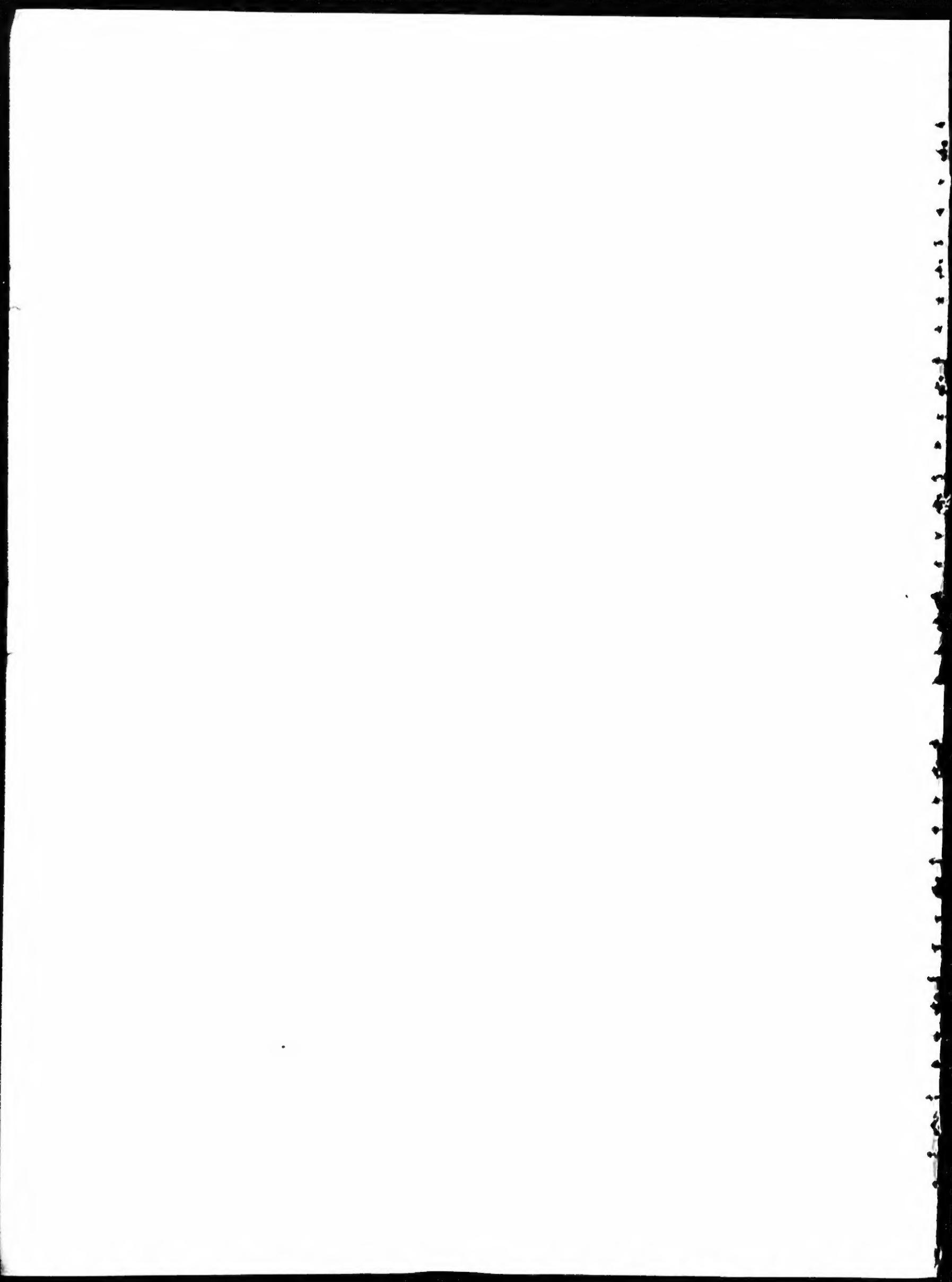
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(i)

STATEMENT OF QUESTIONS PRESENTED

1. Where Appellant furnished information to Appellees as to where to apply for a loan, and where Appellant introduced Appellees to a member of the Board of Trustees of a lending fund, such action was not negotiating or offering or attempting or agreeing to negotiate for a secured real estate loan, and did not require that Appellant hold a real estate broker's license under the District of Columbia Code.
2. Where Appellant was a member of a joint venture and, even though he negotiated for a real estate loan on property of the venture, he would have done so as an owner and would have been within the exception in the District of Columbia Code, and would not be required to hold a real estate broker's license.
3. Even if the Appellant had negotiated for a loan and has not held a real estate broker's license, yet Appellees—under the facts in the case at bar—would be estopped to set up that defense against Appellant because of the joint venture relationship between them and the further fact that the commitment for the loan was obtained and used by the joint venture for construction loan financing.



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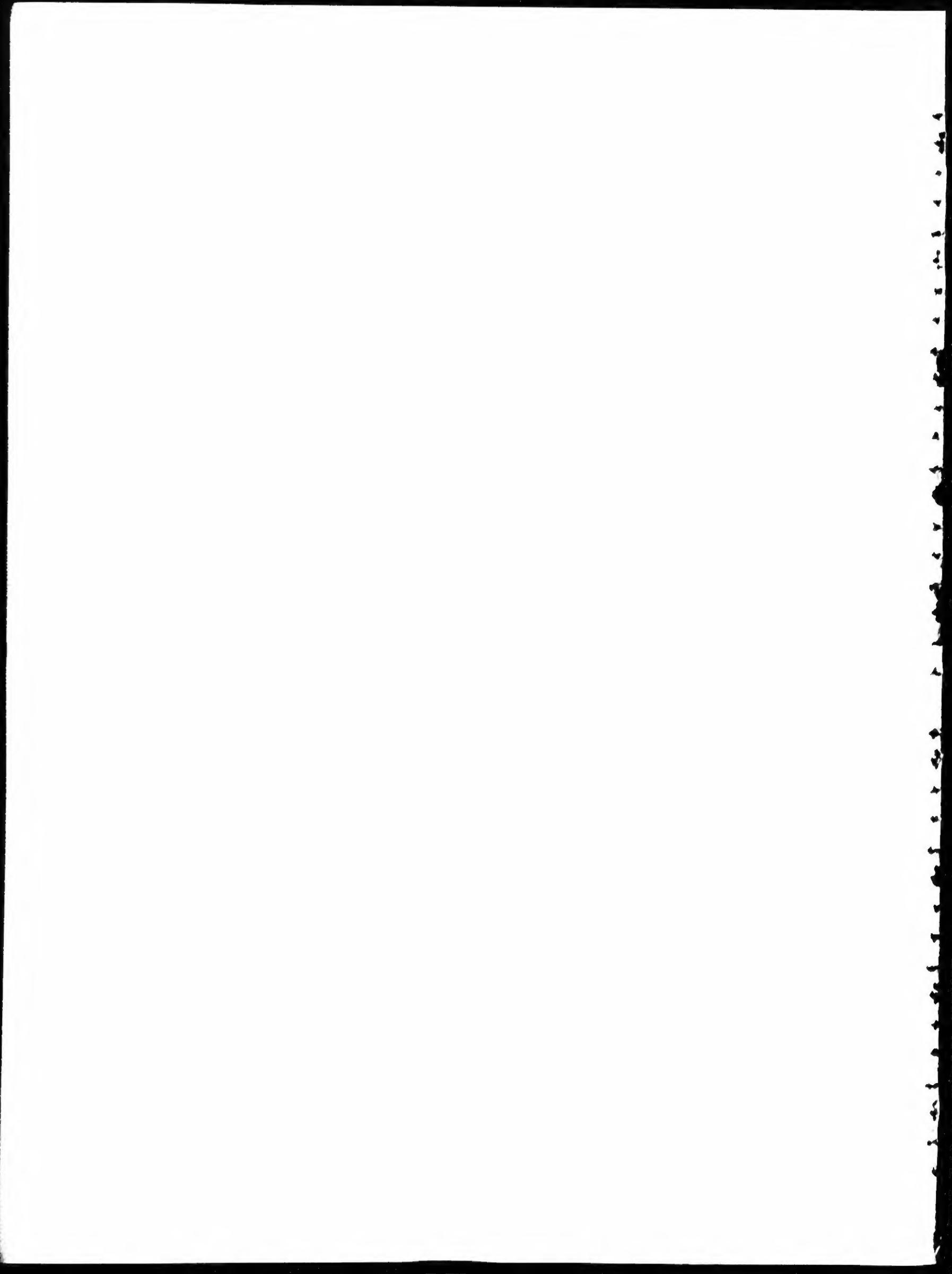
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,800

I. IRVING DAVIDSON

Appellant,

v.

MARSHALL B. COYNE
CHARLES ROSE
EDWARD C. BALTZ
THORNTON W. OWEN

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant sued in the United States District Court for the District of Columbia to establish an interest in real estate based upon Appellant's claim that he was a member of a joint venture which owned the real estate. The Appellees answered the complaint, setting up numerous defenses, including a defense that the Appellant was not licensed as a real estate broker and therefore could not maintain his suit.

Appellees filed a motion for summary judgment on the sole ground that Appellant had negotiated for a real estate loan without a license as required by law, and had barred himself from the relief sought. Upon this ground, only, the lower Court granted a summary judgment dismissing the complaint, said order being signed on the 8th day of June, 1964, and on the 11th day of June, 1964 this appeal was noted (App. 62).

This Court has jurisdiction of the appeal under Title 28 of the United States Code, Section 1291.

STATEMENT OF THE CASE

The Appellees acquired that land at 15th and "M" Streets, N.W., in the District of Columbia, which had been occupied by the Episcopal Eye, Ear and Throat Hospital. They had had the building demolished and were planning to erect a motor hotel on the site.

At the end of 1959 or at the beginning of 1960 the Appellee, Marshall B. Coyne, took the Appellant to the site, explained their need for a source of financing, and asked for his help (App. 32). Said Appellee advised the Appellant that his associates were the other Appellees herein. By oral agreement made, either at that time or later, if Appellant would find a good source of financing, he would become a member of a joint venture which was to build the motor hotel on this site, and he was to have a one-fifth interest (App. 53). The loan which Appellees were seeking would be a loan which would cover the cost of construction and the necessary equipment for the motor hotel, but would not include any of the land costs, and the land costs would be paid back to the Appellees before any return on the investment was received by the joint venture members. It was also understood and agreed that, in the event of the financing being insufficient to pay all

the costs, then the Appellees would lay out the balance of the money necessary and would receive it back before any funds were obtained by Appellant (App. 33 and 28).

Appellant agreed that he would assist Appellees in the financing, and he introduced Mr. Coyne to James R. Hoffa, a member of the Board of Trustees of a Pension Fund, and he arranged a meeting whereby Appellees would present a proposal to the Central States Pension Fund to request financing for the project (App. 37 and 40). Prior to the presentation by Coyne, said Coyne sought to obtain information from Appellant as to how the presentation should be conducted, and he found out that Appellant was not familiar with those things—that he, the Appellant, knew nothing about that type of presentation (App. 23).

As a result of the presentation which was made by Coyne from information which Appellees, Thornton W. Owen and Marshall B. Coyne, had prepared, the said Pension Fund approved the loan (App. 18 and 22). Coyne then negotiated for an increase in the amount of the loan, and an amortization moratorium (App. 26 and 27). The written commitment for the approved loan was received by the Appellees in November of 1960 (App. 26).

The permanent loan commitment was used by the Appellees to get a construction loan (App. 16), and the funds from the construction loan were drawn by Appellees and were used in the construction. Under the terms of the construction loan it was to be paid for on its due date out of the money available on the permanent loan.

On January 17, 1961 a letter form of contract and a joint venture agreement were prepared by the attorney for the Appellees, one Sol Grossberg. The letter form of contract was signed by all the parties, including Appellant, and the joint venture agreement was initialed on each page by all of said parties.

The excavation began for the motor hotel, but the Appellees changed their minds about what they wanted to build, and had new plans drawn during the summer or early fall of 1961 (App. 18). They did not consult with Appellant prior to changing the plans.

The Appellees advised Appellant that they were very unhappy because the construction costs were going way over their anticipated figures which Mr. Owen and Mr. Coyne had thought the project would cost (App. 55). They requested that Appellant arrange for Coyne to make another presentation to increase the permanent loan commitment. Appellant did this, and Coyne made a presentation and, as a result thereof, in July of 1962, a commitment for \$7,000,000.00 was obtained, provided that the cost of the project would run \$10,000, 000.00, including the land at the then market value (App. 19). Afterwards appellees Owen and Coyne were repeatedly asked for certified costs by the Pension Fund, but they did not furnish such certified costs (App. 59).

The Appellees asserted to Appellant that he no longer was in the project, as they had abandoned the motor hotel, and had erected a hotel and had not picked up the original loan commitment, and that therefore Appellant was not a member of the joint venture.

After negotiations attempting to work out the matter, this suit was filed.

STATUTES INVOLVED

District of Columbia Code (1961 Edition), Title 45, Section 1402:

"§45-1402. Definitions—Exceptions.

'Whenever used in this chapter 'real-estate broker' means any person, firm, association, partnership, or cor-

poration (foreign or domestic) who, for another and for a fee, commission, or other valuable consideration, negotiates or offers or attempts or agrees to negotiate, a loan secured or to be secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate,

. "The provisions of this chapter shall not apply to . . . ; nor to any person . . . who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, "

ASSIGNMENT OF ERRORS

1. The Court erred in granting the motion for summary judgment on behalf of the Appellees.
2. The Court erred in finding that there were no material issues of fact.
3. The Court erred in finding that Appellant had negotiated or had attempted to negotiate for a loan on behalf of the Appellees.
4. The Court erred in finding that there was no joint venture relationship between the parties, as a matter of law.

SUMMARY OF ARGUMENT

1. The Appellant did not attempt to or offer to, nor did he negotiate for the loan involved herein. The Appellant acted as a "finder," which did not require any license.
2. The Appellant became a joint adventurer with Appellees, and as such could have negotiated for a loan without violating the District of Columbia Code.

3. As members of a joint venture the Appellees could not have used the labor of their joint adventurer to obtain the commitment for permanent financing, and then use said financing to obtain money under a construction loan for the benefit of the joint venture, and thereafter refuse to recognize the joint venture relationship, even if a broker's license had been required.

The granting of the motion for summary judgment, based on the sole ground that Appellant did not have a real estate broker's license, was error.

ARGUMENT

I

Appellant Acted as a "Finder," and Did Not Negotiate for a Loan

The facts in this case, although in dispute to some extent, clearly are that Appellant was used to set up an appointment with sources of funds, and every portion of the negotiations as such were handled by the Appellees.

The Court of Appeals of Maryland, in *Baldwin v. Grymes*, 232 Md. 470, 194 A.2d 285, faced a similar problem and had this to say:

"It seems to us that the part Zachariah Johnson played in the transaction which culminated in his estate receiving these sums of money was closely akin to that of a finder. A 'finder', it has been said, is one who finds, interests, introduces and brings together parties for a deal, even though he has no part in negotiating the terms of the transaction (citing authority). As compensation for his services, a finder customarily receives a commission or finder's fee, frequently based on a prior oral agreement with the party

for whom he did the finding (citing authority). Notwithstanding the fact that the subject matter of the transaction might involve real estate, most jurisdictions enforce an oral finder's agreement for compensation where it is clear that the finder was not actually a real estate broker (citing authority)."

In the case of *P. W. Chapman & Co., Inc. v. Cornelius*, 39 Fed.2d 255, a case arising out of the District Court of New York where the statutory requirements are the same as in this jurisdiction, the Court held that furnishing information regarding property for purchase on which financing was contemplated, was not negotiation of a secured loan requiring a broker's license under the statute. The Court there had this to say:

'In its nearest approach to the definition of a real estate broker contained in Section 440 of the statute (Consol. Laws New York, Chapter 50), the plaintiff's conduct should be regarded with reference to an attempt to negotiate, for a fee or commission, a loan to be secured by mortgage on real estate. Unless what he did falls within that phase of the statute, his suit is not affected by its provision To attempt to negotiate a loan, the plaintiff must at least have tried to bring about a loan by treating with or in behalf of somebody with a view to coming to an agreement upon some or all of the terms of the loan. Yet he did not try to agree with anyone or to have anyone agree upon the terms of any loan. He only put the defendant in possession of facts it wanted to enable it to decide whether it would be worthwhile for it to negotiate for any financing which might be involved in the sale of the building and for the difference between finding business for others to do and acting as a broker in doing the business, see *Knauss v. Gottfried Krueger Brewing Co.*, 142 N.Y. 70, 36 N.E. 867'"

We submit that it is obvious that there was no negotiation by Appellant, as such. The most that could be said was that he was a finder.

II

**A Joint Adventurer Is an Owner, Within the Exceptions of the
Provisions of the District of Columbia Code, and Needs
No Broker's License To Deal in Venture Property**

The question of fact created by the evidence is whether the joint venture began at the time that the oral agreement was made, or at the time of the compliance by Appellant with the terms by the introductions he made and the arrangements for presentation he was able to provide.

The written agreement was made long after the commitment had been obtained and after the joint venture had actually come into existence. Joint ventures do not have to be in writing.— *Libby v. L J Corporation*, 101 U.S. App. 87, 247 F.2d 78.

A case which we consider on point is *Summers v. Hoffman et al*, 341 Mich. 686, 69 N.W. 2d 198, involving the very question before this Court. In that case the Court said:

"..... When we consider that for the purpose of this statute as well, a joint adventurer when selling property of the venture, is doing so as an owner, this exception is applicable."

The Michigan statute is similar to the District of Columbia statute, in that it requires that persons to be covered in the Real Estate Broker's Act be dealing for others or for another. As stated in *Summers v. Hoffman, supra*:

"It cannot be said that a joint adventurer is so doing when he is selling the property of the venture."

It is clear that the Appellant in our case was acting as "one of the team." He did not think he was acting otherwise, nor could Appellees have obtained his services in finding the source of financing except for their representation to him that he was to be a part of the joint venture.

So we think the Court must conclude that the broker's licensing statute is not applicable to the facts in this case, because a joint venture existed between Appellant and Appellees.

In the case of *Lloyd v. Wiseman* (a Tennessee appeals case), 368 S.W. 2d 303, the defendant claimed that the complainant was not entitled to recover because he had not obtained a license as a real estate broker, and he relied on a statute similar to the one in the District of Columbia. The facts in that case involved the entering into an undertaking by the complainant with the defendant and one other for a joint profit in buying, subdividing and selling real property in Tennessee. The profits, according to the evidence, were to be divided between the three partners. The defendant in the case was to furnish the money and the others were to do the work. The existence of the partnership was denied, and the defendant claimed that he had paid for all the services rendered by the complainant. The basic defense was that the complainant had failed to take out a license as a real estate agent. The Court there found on the evidence, after the trial, that a partnership existed, and further found for the complainant for a sum of money. On appeal the Court of Appeals said:

"With reference to defendant's contention that complainant is not entitled to recover in this cause because of his failure to obtain a license, either as a real estate broker or a salesman, reliance is placed on the provision (of the Tennessee statute) that the license required by that statute was not necessary where the parties involved were selling their own land."

The statute in that jurisdiction, like the District of Columbia, required that persons covered by the Act shall be doing business for others.

III

**The Appellees Are Estopped To Assert
the Defense of No License**

Presuming for the sake of argument that the Appellant had negotiated a loan for the joint venture and that the joint venture had—as it did—used said commitment to obtain a construction loan, which funds they used and built the property which was to belong to the joint venture, can the four Appellees then conclude on their own that the joint venture did not exist; and that, particularly, since their joint adventurer did not have a broker's license, he could not assert his interest in the joint venture? They treat the matter as if it were an illegal act to negotiate for a loan without a broker's license; and, even if this were correct, as was said in *Lloyd v. Wiseman, supra*:

"Even if complainant were liable for the real estate license, however defendant, under the facts of the case at bar, would be estopped to set up that defense against him. In the case of *Brooks v. Martin*, 2 Wallace 70-87, 17 Law Edition 732, the Supreme Court of the United States held that where one partner, associate or co-adventurer was suing another for his share of the profits resulting from the buying up of land warrants of soldiers returning from the Mexican War in violation of a federal statute which prohibited the purchase of such warrants, that the party complaining was entitled to recover his share of the profits already accrued, notwithstanding the illegality of the transaction. The Supreme Court of Tennessee has made a similar ruling in the cases (citing cases)."

CONCLUSION

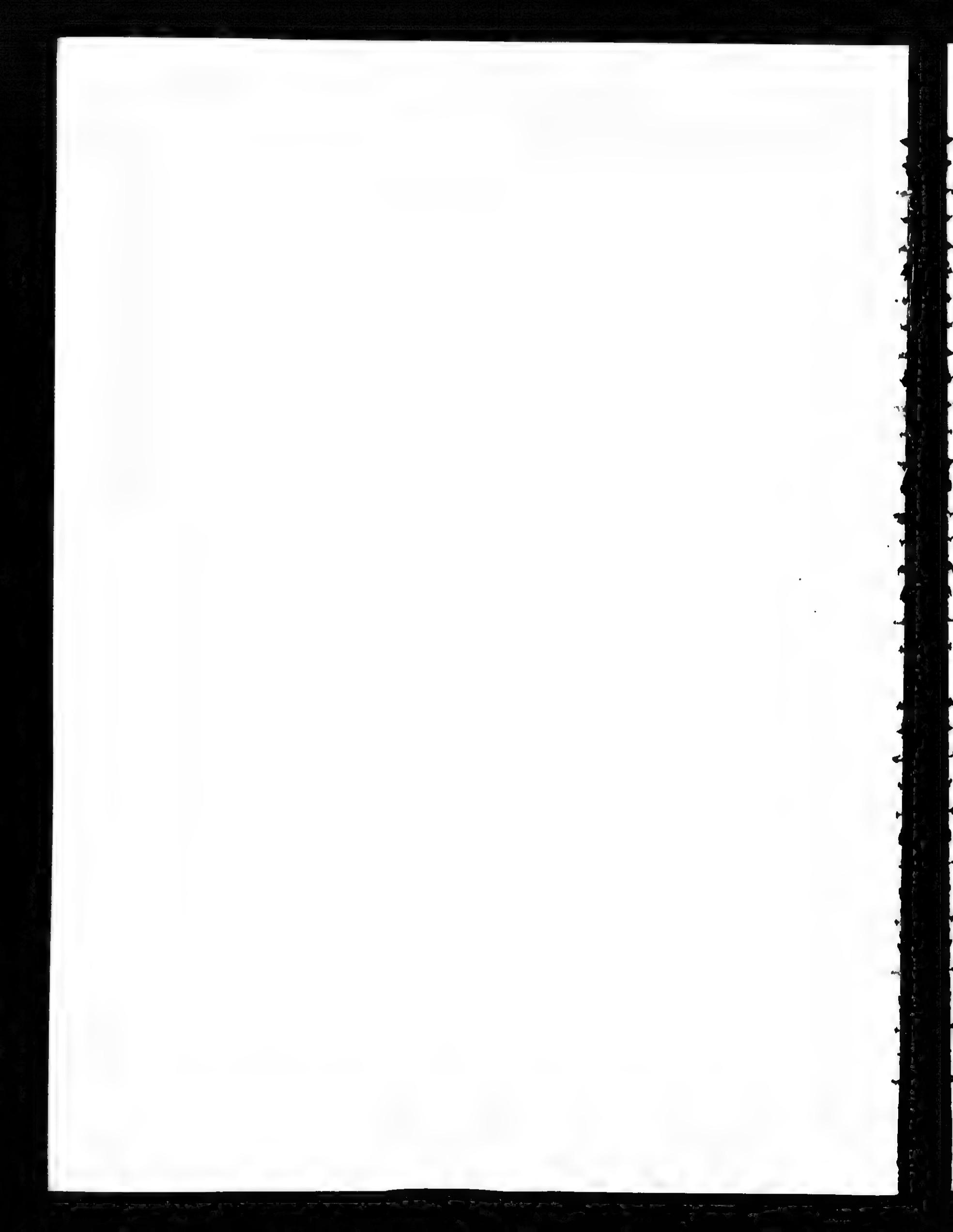
This decision was based on a motion for summary judgment, which of course prevented a full exploration of the facts by trial. Lengthy depositions were taken, but all of the evidence of course was not presented. The motion was granted on a very limited basis, and it should have been denied.

It is respectfully requested that the cause be reversed and referred to the Court for trial on the issues as to the existence of a joint venture and on the issue of estoppel as well as the basic questions of the application of the statute.

Respectfully submitted,

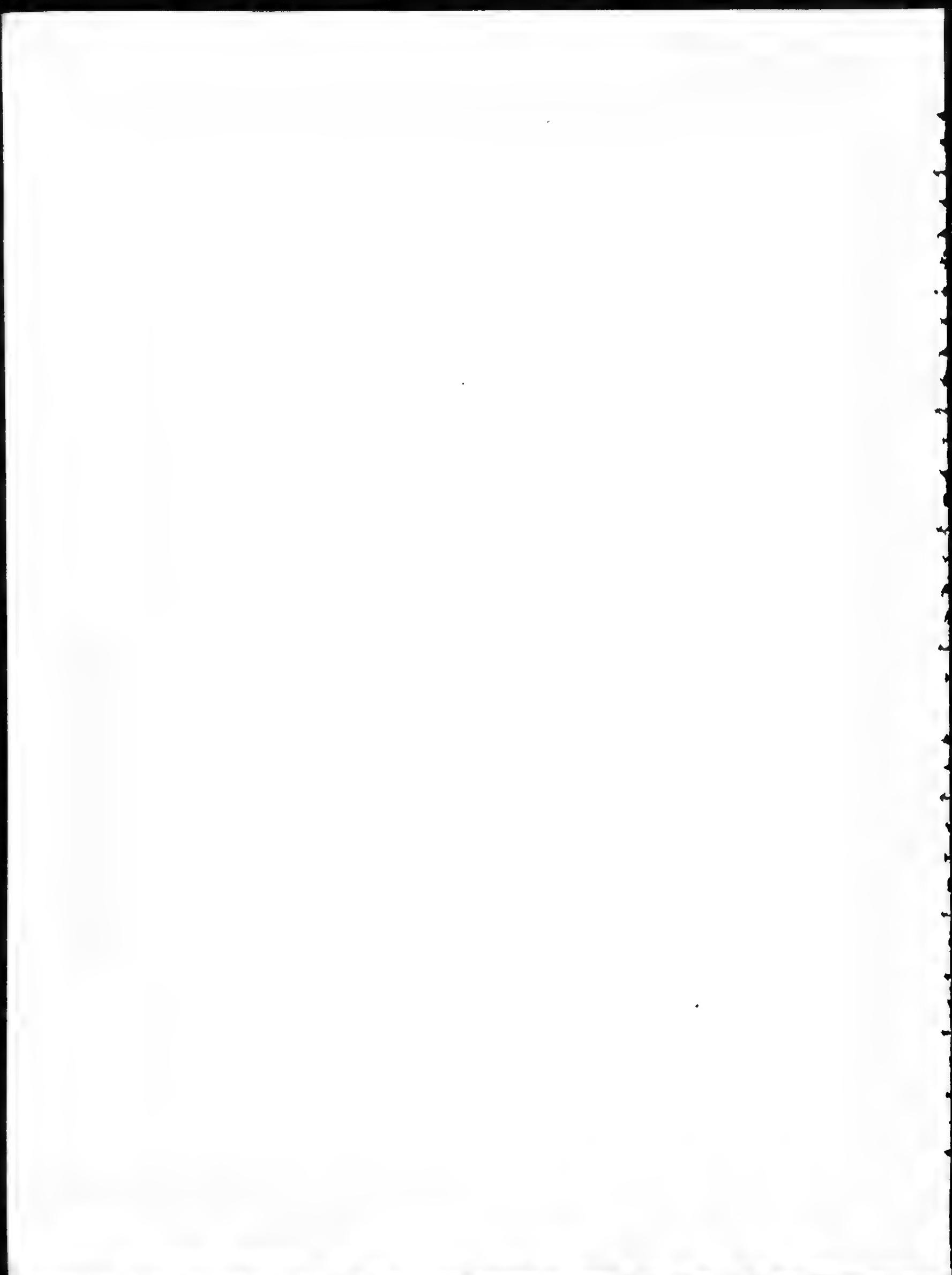
FRIEDLANDER & FRIEDLANDER

By: Mark P. Friedlander
Attorneys for Appellant



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JOINT APPENDIX

[Filed May 23, 1963]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**I. IRVING DAVIDSON
2801 McKinley Place, N.W.
Washington, D.C.**

Plaintiff

vs.

Civil Action No. 1324-63

**MARSHALL B. COYNE
1107 - 19th Street, N.W.
Washington, D.C.**

**CHARLES ROSE
1107 - 19th Street, N.W.
Washington, D.C.**

**EDWARD C. BALZ
11th & E Streets, N.W.
Washington, D.C.**

and

**THORNTON W. OWEN
11th & E Streets, N.W.
Washington, D.C.**

Defendants

**COMPLAINT TO ESTABLISH INTEREST IN REAL ESTATE,
FOR BREACH OF FIDUCIARY RELATIONSHIP
ARISING OUT OF JOINT VENTURE AND
FOR AN ACCOUNTING**

1. The Plaintiff is a resident of the District of Columbia and a citizen of the United States. The Defendants, Marshall B. Coyne, Charles Rose and Thornton W. Owen, are residents of the District of Columbia and citizens of the United States, and the Defendant, Edward

C. Baltz, is a resident of the State of Maryland and a citizen of the United States. The amount involved exceeds \$10,000.00.

2. This suit is for an accounting for breach of the fiduciary relationship arising from a joint venture and to establish plaintiff's interest in real estate.

3. That the defendants, prior to the agreement to and the actual formation of the joint venture, were the owners of the below described real estate but they held title in the name of Hilda K. Wine, who had no actual or real interest in said property. In the late summer or early fall of 1960, the plaintiff and the defendants agreed to form a joint venture, which had for its purpose the erection of a high-rise motor hotel at 15th & M Streets, N.W., on the site below described. That on, to-wit: January 17, 1961, the parties hereto reduced to writing the basic elements of said agreement. That under the arrangements made the plaintiff became the owner of an undivided one-fifth (1/5th) interest in said below described real estate, subject to the deeds of trust provided for. The real estate, however, was held by the joint venture in the name of Hilda K. Wine up to and including the 20th day of April 1962 when the defendants caused the property of the joint venture to be conveyed to the defendants only.

4. That the property involved is described as follows:

Lots 8 to 14, both inclusive, in the subdivision of lots made by the heirs of John Davidson in Square 214, as per plat recorded in Liber N.K. Folios 57 & 58 of records of the Office of Surveyor of the District of Columbia.

Also Lot C in D.A. Gardener's Subdivision of Lots in Square 214, as per plat recorded in Liber N.K. Folio 226 of the records of the Office of the Surveyor of the District of Columbia.

Also Lot 93 in Episcopal Eye, Ear, Nose & Throat Hospital's combination of lots in Square 214 as per plat in Liber 40 Folio 85 of the Office of the Surveyor of the District of Columbia.

Also "Alley closed" in said Square 214 as per plat recorded in Liber 120 Folio 190 of the Surveyor's Office of the District of Columbia.

5. Under the terms of the joint venture agreement your plaintiff

was required to obtain financing, and this the plaintiff successfully accomplished, and the commitment so obtained by the plaintiff was used by the joint venture as a basis for a construction loan, the funds from which made possible the building erected.

6. Notwithstanding the obligation of the defendants, Marshall B. Coyne and Charles Rose, as joint adventurers, to deal fairly and honestly with the other members of the venture, particularly the plaintiff, the said Marshall B. Coyne and Charles Rose did employ their "alter ego," the Roscoe-Ajax Construction Company, Inc., to erect a building or buildings and as a result thereof the costs and expenses of said project were far beyond and above the normal price for such work. That said Marshall B. Coyne and Charles Rose did not discuss with, nor confer with, the plaintiff about such construction job but wholly ignored the plaintiff and upon plaintiff's complaint in October 1962 the defendant Marshall B. Coyne, in December 1962, denied that the plaintiff was a part of the joint venture and asserted that plaintiff had no interest in the project which was then completed.

7. Your plaintiff has performed all the duties required of him under the agreement and is entitled to his one-fifth (1/5th) interest as agreed.

8. That plaintiff is advised and therefore alleges that he is entitled to a full and complete accounting from the defendants for all moneys expended and is further entitled to request reimbursement from defendants Marshall B. Coyne and Charles Rose to the joint venture of any funds improperly disbursed by them or for any funds not properly accounted for.

9. That a portion of the land that was to be a part of the joint venture has been utilized by the defendants for the erection of an office building and plaintiff says that the violation by the defendants of the agreements made does not take from the plaintiff his interest in said land and he is entitled to one-fifth (1/5th) interest in said office building as well as the hotel.

WHEREFORE, the plaintiff demands judgment:

- (1) That a joint venture exists between the plaintiff and the defendants;
- (2) That the joint venture is the owner of the real estate

described herein plus the improvements thereon;

(3) That by way of further relief the Court grant preliminary and final injunction enjoining and restraining the Defendants, their agents, employees, associates and others acting in concert with the Defendants from interfering with the Plaintiff's rights to the real estate and improvements thereon and to prevent the sale or disposition of the real estate herein described insofar as Plaintiff's rights are concerned;

(4) That defendants, Marshall B. Coyne and Charles Rose, be required to fully account for all funds disbursed by them in the erection of the hotel and the furnishing thereof;

(5) That the office building erected belongs to and is part of the assets of the joint venture:

(6) For such other and further relief as to the Court may seem meet.

FRIEDLANDER and FRIEDLANDER
By Mark P. Friedlander
Attorneys for the Plaintiff

[Filed June 12, 1963]

ANSWER OF DEFENDANTS

As and for their respective answers, defendants Marshall B. Coyne, Charles Rose, Edward C. Baltz and Thornton W. Owen, severally state:

First Defense

The complaint herein fails to state a claim for which relief can be granted.

Second Defense

1. Defendants admit the citizenship and residence of the parties as well as the jurisdiction of this Court.

2. Defendants admit that at all times material herein they were the owners of the realty set forth in the complaint herein and that on

January 17, 1961, they entered into a written agreement with the plaintiff concerning part of said realty and a proposed joint venture to be entered into in the future.

3. Defendants deny the creation or existence of a joint venture between the parties and deny each and every other material allegation contained in the complaint herein.

Third Defense

Defendants aver that the creation of a joint venture between the parties was expressly conditioned upon the happening of certain events or contingencies and the performance of certain acts upon plaintiff's part; none of which have happened or been performed.

Fourth Defense

Defendants aver that any interest which plaintiff may have had in the agreement of January 17, 1961 was abandoned by him and mutually rescinded by the parties thereto.

Fifth Defense

Defendants aver that plaintiff, by negotiating, offering or agreeing to negotiate a loan secured by real estate without a license as required by law in such instances, has thereby barred himself from the relief herein sought.

KEOGH, CAREY & COSTELLO

/s/ DAVID G. BRESS

Attorneys for Defendants

[Certificate of Service, June 12, 1963]

[Filed May 19, 1964]

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants move the Court for summary judgment pursuant to Rule 56, F.R.C.P., dismissing the above captioned action on the ground that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law since

plaintiff's claim asserted herein is barred by Sec. 45-1407, D.C. Code, as is more fully set forth in the attached Statement of Material Facts, Memorandum and Exhibits.

KEOGH, CAREY & COSTELLO
/s/ DAVID G. BRESS
Attorneys for Defendants

[Certificate of Service, May 19, 1964]

[Filed May 19, 1964]

EXHIBIT 1

January 17, 1961

Mr. I. Irving Davidson
1612 K Street, N.W.
Washington, D.C.

Dear Mr. Davidson:

The undersigned are the owners of the property situate at the Southeast corner of 15th and M Streets, N.W., Washington, D.C., upon which we propose to erect or cause to be erected a fourteen (14) story motor hotel. At the present time, the title to said property is held in trust for our benefit by Hilda K. Wine.

We propose to enter into a joint venture agreement, of which you and we will be parties, a copy of which proposed joint venture agreement is attached hereto. In connection with the organization of said joint venture it is our intention that the land we own now would be invested by us in the joint venture at a value of \$1,250,000.00 and said investment would be secured by a note or notes and second deed of trust in said amount payable to our order, bearing interest at the rate of six percent (6%) per annum and due and payable to us on or before June 1, 1973. In addition, each of the joint venturers would be required to put up \$5,000.00 and each joint venturer would be entitled to a one-fifth (1/5th) interest in the venture. The joint venture would be formed only in the event of the following:

- (a) That the construction of the motor hotel project is fully completed.
- (b) That a permanent first deed of trust loan on the motor hotel project is made to Hilda K. Wine, or such other party designated by us, by the Central States Southeast and Southwest Areas Pension Fund in the principal sum of \$4,665,000.00 upon terms and conditions acceptable to us, and that said loan will be fully disbursed to, and received by, the said Hilda K. Wine or such other party designated by us.

If either of the aforementioned conditions (a) or (b) is not fulfilled, we will have no obligation whatsoever to form this joint venture nor will you be entitled to acquire any interest in said property.

Upon the completion of the project as stated above, each of the parties would be the owners of a one-fifth (1/5th) interest in the motor hotel and land, subject to (1) the lien of the first deed of trust of \$4,665,000.00 aforesaid and (2) to the lien of a second deed of trust securing a note or notes payable to our order in the principal amount of \$1,250,000.00 bearing interest at the rate of six percent (6%) per annum and due and payable on or before June 1, 1973, which said second deed of trust note will be owned or held by the undersigned four (4) parties. You will have no interest in said second trust note. It is our understanding that you will be the sole owner of your one-fifth (1/5th) interest in the proposed joint venture and that no other person is to have any part of your said interest.

It is our further understanding that if the construction of the motor hotel and its related facilities requires more funds than the aforesaid first deed of trust of \$4,665,000.00, such additional financing shall be furnished by the four original owners with the understanding that any such monies advanced would be paid out of the first available funds of the joint venture before any distributions are made to the members thereof.

Contemporaneously with organization of the joint venture referred to herein if the conditions aforesaid are met, it is our intention to organize a corporation in which you and each of us will each own twenty percent (20%) of the capital stock. You and each of us will invest in said corporation, as capital, the sum of \$5,000.00. Said

corporation will enter into a lease of the completed motor hotel and its appurtenances for a term of years to be determined and for a rental in an amount sufficient to pay the interest on, and the principal curtailment of, the \$4,665,000.00 first trust indebtedness as well as the interest on the \$1,250,000.00 second trust. Said lease shall require, in addition to other provisions designated by us, that the corporate tenant will be obligated to pay all real estate taxes, personal property taxes, all exterior and interior repairs to the property including repairs and replacements of personal property, all hazard insurance premiums and any and all other costs and expenses involving the operation and management of said property to the end that the rental to be paid by the corporate tenant to the owners of the property will be absolutely net.

It is also our intention that the corporation to be organized by us for the operation of the motor hotel will enter into a management agreement with some authorized group experienced in the business of operating a hotel at such fee or other remuneration as a majority of the undersigned parties shall deem appropriate.

If you agree to the foregoing please sign a copy of this letter indicating such approval.

Very truly yours,
/s/ Thornton W. Owen
/s/ Edward C. Baltz
/s/ Marshall B. Coyne
/s/ Charles Rose

I agree to the foregoing.

/s/ I. Irving Davidson

[Filed May 19, 1964]

JOINT VENTURE AGREEMENT

THIS AGREEMENT made this day of , 1960,
by and between THORNTON W. OWEN, EDWARD C. BALTZ,
CHARLES ROSE, MARSHALL B. COYNE and IRVING DAVIDSON.

WITNESSETH:

WHEREAS the parties hereto are the owners, in equal shares, of the real property situated at the southeast corner of 15th and M Streets, N.W., in the District of Columbia, described in Exhibit "A" and made a part hereof, the record title to which property is currently held in trust by Hilda K. Wine, unmarried, for the benefit of the parties hereto; and

WHEREAS said property is improved by a multi-story motor hotel and related garage improvements; and

WHEREAS said property is encumbered by a first deed of trust in the principal amount of Four Million Six Hundred Sixty-five Thousand Dollars (\$4,665,000.00) and a second trust in the principal amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00); and

WHEREAS the parties hereto desire to associate in a Joint Venture for the purpose of owning said property;

NOW, THEREFORE, in consideration of the mutual promises, undertakings and agreements herein set forth and for other good and valuable consideration from each of the parties hereto moving to the other, receipt of which is hereby acknowledged, the parties agree as follows:

1. The parties hereto (also sometimes herein referred to as Participants) do hereby acknowledge that they are the owners, in equal shares, of the property described in Exhibit "A" attached hereto as tenants in common. Said property is subject to and encumbered by a first deed of trust in the principal amount of Four Million Six Hundred Sixty-five Thousand Dollars (\$4,665,000.00) and a second deed of trust in the principal amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), which second deed of trust is owned and held by some, but not by all, of the Participants.

2. Each of the Participants does hereby contribute to the capital of the joint venture his undivided interest in said property, subject to the encumbrances against the same as set forth above.

3. The Joint Venture shall commence on the date hereof and shall continue without limit as to time but shall be subject to termination for any cause that under the laws of the District of Columbia constitutes termination of a Joint Venture.

4. The parties expressly acknowledge and confirm that this instrument does not, and is not intended to, constitute a partnership.

5. The Participants agree that when any monies are required in connection with said property and the ownership, maintenance and operation thereof, each Participant will promptly pay his pro-rata share thereof as set forth in Paragraph 6 of this agreement.

6. The respective contributions to the capital and the ownership of the property shall be in equal shares, namely: Each shall be entitled to a one-fifth (1/5th) interest thereof. All net profits realized by the Joint Venture shall belong to or inure to the benefit of the Participants in equal shares and any losses sustained by the Joint Venture, including loss of capital, shall be borne by the parties in like proportion.

7. The interest of each of the parties hereto in the property of the joint venture shall be as tenants in common, and not as joint tenants.

8. All moneys that are or shall become due to the joint venture shall be deposited in one or more bank accounts to the credit of the Joint Venture in such bank or banks as may be mutually approved by the members of the Joint Venture. Checks drawn on funds in any such account may be signed by such person or persons designated from time to time by the members of the Joint Venture.

9. The accounts of the Joint Venture shall be kept properly posted, in books to be provided by and belonging to the Joint Venture. Said books shall be audited by a certified public accountant acceptable to all of the members of the Joint Venture and whose fees are to be paid as an expense of operation of the Joint Venture. Said books of account shall at all times during regular business hours be available for inspection by any member of the Joint Venture desiring to examine the same.

10. At least once in each year during the term of the Joint Venture an account shall be taken of the assets and liabilities and of the income and disbursements of the joint venture, and each member of the Joint Venture shall be properly credited with his share of the net profits, or charged with his share of the losses, as the case may be.

11. In making distribution of profits to the Participants, the

parties shall set aside a reserve fund for taxes, insurance and other contingencies in such amount as may from time to time be determined.

12. The parties agree to lease the real property of the Joint Venture to such tenant and at such rental and upon such terms and conditions as the parties may mutually agree upon.

13. If any bona fide written offer is received for the entire property of the Joint Venture, which offer is acceptable to seventy per cent (70%) or more in interest of the Participants (but not to all of the Participants) then those who do not approve the offer must elect, within ten (10) days, after the sending of written notice of such offer to them by the recipients of such offer, (i) to buy out the entire interest of all of the Participants who approve the offer at proportionately the same price and on the same terms as are contained in said offer; or (ii) to join with the other Participants in the sale of the property upon the same terms and conditions of said offer. Such election shall be made by notice in writing sent to the recipients of the offer within said ten (10) days period.

14. None of the Participants shall at any time, without the prior written consent of all of the other Participants, mortgage, pledge or otherwise encumber his interest in the property and assets of the Joint Venture.

15. (A) None of the Participants shall sell, assign, transfer or in any other manner dispose of his interest in the real property of the Joint Venture, nor shall such interests be transferable except in accordance with the following provisions:

(i) In the event a Participant receives a bona fide offer for his interest in the property and assets of the Joint Venture (hereinafter called the "outside offer") which he is willing to accept, he shall promptly notify each of the other Participants thereof in writing. Said other Participants shall then have ten (10) days from the date of the receipt of such notice by them in which to elect to purchase, proportionately, the offering Participant's interest at a price proportionately equal to, and on the same terms, contained in the outside offer. If one or more of the other Participants (but less than all) shall elect to purchase the offering Participant's interest, then the

offering Participant shall notify those Participants who have elected to purchase their proportionate shares of said interest so offered, of the failure by the other Participants to elect to purchase their proportionate shares so offered. Thereupon, the Participants who have elected to buy the interest so offered for sale shall have five (5) additional days from the date of their receipt of such last notice in which to elect to purchase, in shares equal to their proportionate holdings, the portion of such offering Participant's interest which the other Participants did not elect to purchase. If only one of the Participants elects to purchase the offering Participant's interest, he shall have the right to buy all of said interest so offered for sale. If the offering Participant does not receive elections to purchase all of his interest so offered for sale by him within the aforesaid periods of time, then the offering Participant shall be at liberty, within a period of six (6) months of the last date upon which the other Participants could have elected to buy the interest of the offering Participant, as above provided, to consummate the sale to the outside offeror at a price and upon terms not more advantageous to the outside offeror than the price and terms stated in the original offer made by the outside offeror and submitted to the other Participants. If, however, such sale to the outside offeror is not consummated within said period of six (6) months, then any subsequent sale to any outside offeror shall also be subject to all of the requirements of this paragraph. In the event the other Participants, or any of them, shall elect to purchase all of the offering Participant's interest, then the transfer of said interest and the closing of the transaction shall occur thirty (30) days after the exercise of the option to buy said interest. Said closing shall take place at the office of the attorney for the offering Participant, at which time and place the purchase price shall be paid in accordance with the terms and provisions of the outside offer, and the necessary instruments of transfer shall be executed and delivered by the offering Participant with necessary documentary stamps, if required, affixed thereto. Every offer between Participants in accordance with this agreement shall be in writing, shall contain an offer to sell to the offeree his proportionate part of the offeror's interest in the property and assets

of the joint venture at a price proportionately equal to the price and upon the same terms as the outside offer received by the offering Participant, and shall be accompanied by a copy of such outside offer, which shall set forth the name, home address, business address and business of the outside offeror. Such outside offer, in order to be deemed to be a bona fide offer within the meaning of this paragraph, must be in writing, signed by the outside offeror who must be a person or corporation financially capable of carrying out the terms of the offer, must be in form legally enforceable against the outside offeror, must set forth the address and business of the outside offeror, and must be accompanied by a good faith deposit equal to at least ten percent (10%) of the proposed purchase price.

(B) Notwithstanding the provisions of subparagraph A of this Article 15, the interest of any Participant in the property of the joint venture may, without the consent of the other Participants, be transferred or disposed of by instrument or instruments inter vivos or by will, to any of the following:

(i) A Participant's spouse, descendant or spouse of a descendant.

(ii) Any person already a Participant.

(iii) A charitable corporation, the controlling members or directors of which shall be any of the Participants.

(iv) A trust, whether testamentary or inter vivos, of which the Participant or any of the persons or corporation named in subparagraphs (i), (ii) or (iii) of this Article 15 is principal income beneficiary.

Provided, however, that upon the transfer of any Participant's interest in the property of the joint venture to any of the persons, corporations or trusts named in this subparagraph 15(B), any subsequent sale or transfer of said interest by such transferee shall be subject to the terms and provisions of this Article 15. Further provided, that at or prior to the date of the transfer of any interest as aforesaid, the transerrer shall give written notice thereof to the other Participants, setting forth in such notice the name and address of the transferee.

16. The parties hereto, for themselves, their respective heirs,

any personal representatives, agree to make, execute and deliver at any time, any additional documents which may be necessary or proper to comply with and to carry out the purposes of this agreement.

This agreement contains the entire understanding between the parties hereto, and may not be changed or terminated orally. This agreement shall be governed in all respects by the laws of the District of Columbia.

Any obligation of any Owner to contribute towards the payments due under any mortgage or deed of trust obligation on any property of the Joint Venture, or to any other payments, shall be for the benefit only of the parties hereto, and shall not be for the benefit of the holder of any such mortgage or deed of trust obligation or any other creditor.

This agreement shall bind and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators and assigns.

This agreement is executed in several counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

/s/ Thornton W. Owen	[SEAL]
/s/ Edward C. Baltz	[SEAL]
/s/ Charles Rose	[SEAL]
/s/ Marshall B. Coyne	[SEAL]
/s/ Irving Davidson	[SEAL]

[Filed, May 19, 1964]

October 31, 1962

Mr. Edward C. Baltz
Mr. Thornton W. Owen
Mr. Marshall B. Coyne
Mr. Charles Rose

Gentlemen:

It has been almost two years since we signed our agreement of

January 17, 1961, to enter into a joint venture with respect to the Madison Hotel.

As I read the document, I have fulfilled my part of the bargain—to obtain a commitment for a permanent first deed of trust loan on the hotel under terms and conditions acceptable to you. On the basis of this commitment we were able to obtain the necessary construction financing.

It was, and is, my understanding that my participation in the project is to be as a partner; that we are to share our problems, discuss them together and pool our respective talents to make this hotel the best in Washington and perhaps in the Nation. I know I can contribute to this venture; certainly in the formulation of the public relations aspects and in creating the image we want to present to the public.

Yet thus far I have not been consulted on any phase of the project other than the original financing. Surely, if we intend to operate as a joint venture for an indefinite period in the future, we must begin to act like one and to call upon one another to resolve our problems jointly. This is necessary not only to preserve our legal rights in the joint venture but, from a practical point of view, to utilize all our talents in making it successful financially.

I would appreciate it, therefore, if from now on I am kept advised of all policy questions, given an opportunity to consider them and permitted to contribute what I can to the resolution of these problems. This was supposed to be a team effort—let's make it so! I am always ready and willing to meet with you for this purpose.

Sincerely yours,

/s/ I. Irving Davidson

IID/ck

DEPOSITION OF CHARLES ROSE

29 BY MR. FRIEDLANDER: * * *

Q. Did you ever discuss this agreement, speaking now of the Davidson thing, in any place except your office? A. No.

Q. It would always be at your office? A. Yes.

Q. Did you ever discuss just with you and Davidson, without anybody else being present? A. That I don't remember.

Q. You could or could not have? A. I could or could not have.

Q. Did you ever discuss with Mr. Coyne the cancellation of the Davidson agreement? A. I don't know what you mean by "cancellation." We never had an agreement. There was never an agreement drawn. The agreement was supposed to be drawn if he lived up to what he was supposed to do.

* * *

32 BY MR. FRIEDLANDER:

Q. What did you do with the commitment in relation with that loan?

MR. KEOGH: I don't know as he understands what commitment you are referring to.

BY MR. FRIEDLANDER:

Q. Do you know what commitment I am referring to? A. The \$4.6 million?

Q. Yes. What did you do with that? A. We gave it to the bank.

Q. American Security? A. Yes.

33 Q. Why did you give it to the bank? A. To get a construction loan.

* * *

DEPOSITION OF THORNTON W. OWEN

77 BY MR. BURSTEN: * * *

Q. Prior to talking to Mr. Davidson about getting help in obtaining financing, had you talked to anybody else about that? A. We had not. We had talked about the level of the market with various people.

Q. Had you asked anyone specifically for a loan for that purpose?

A. We talked about whether or not there was any interest.

Q. With whom did you have those discussions? A. We talked to a man named Johnson.

Q. Who is Mr. Johnson? A. He represents some of the insurance companies.

Q. Did you talk to him in connection with a specific insurance company? A. I don't recall whether he represents a specific company or several.

Q. Is Mr. Johnson a Washington man? A. Yes.

Q. Could you give us his full name and address? A. I don't recall his full name. His offices are up here on 14th Street just above L.

Q. What did Mr. Johnson tell you? A. That he thought he could probably get a loan.

* * *

78 Q. Did you fill in such a formal application? A. No.

Q. Why not? A. Because he didn't think we could get as much as \$5 million.

Q. How much did he think you could get? A. Four and a half million dollars.

Q. So you decided not to proceed with Mr. Johnson? A. That is right.

* * *

83 BY MR. BURSTEN:

Q. What was it to be? A. If the building was to be built and if he got the commitment, and the pension fund picked up the loan, then he would be given a one-fifth interest in the proposition, and that he would take up his share of the costs after the thing was all completed, after we had gotten our money.

* * *

84 BY MR. BURSTEN:

Q. At the time this deal was made, was there any conversation between any of the parties as to what the status of Mr. Davidson would be in the group if the loan was not picked up? A. He wouldn't have any status.

Q. He was told that? A. It is in the agreement.

Q. Are you referring to the agreement? I am asking what he was told at that time. A. Yes. It had to be a consummated and completed project.

Q. Otherwise he was entitled to nothing? A. That is correct.

Q. Did Mr. Davidson perform any services? A. He procured the commitment for the \$4,665,000 loan.

* * *

147 BY MR. FRIEDLANDER:

Q. Taking up condition (A), as listed in the letter of January 17, 1961, which I think you referred to as the first condition, that the construction of the motor hotel project is fully completed, is it your statement that the construction of the motor hotel project was not fully completed? A. It was not fully completed; no.

148 Q. Was the motor hotel project abandoned? A. Yes.

Q. Can you fix a time of its abandonment? A. We started construction work in February, 1961. It was abandoned sometime during the summer of 1961—summer or early fall.

* * *

149 BY MR. FRIEDLANDER:

Q. At that time what did you do by reason of your commitments, such as the letter of intent of January 17th? What did you do about that? A. We had new plans drawn. In other words, we dismissed the other architect, who was a man named Weihe, and engaged Emory Roth of New York City.

* * *

150 BY MR. FRIEDLANDER:

A. Mr. Coyne, I think, made an appearance before the Trustees of the Fund.

Q. Who was with him? A. I couldn't tell you.

Q. Did he tell you who was with him? A. I don't recall whether he did or did not.

When he appeared before the Trustees of the Fund, on some occasions Mrs. Davidson went with him and on some occasions he did not.

* * *

155 BY MR. FRIEDLANDER:

Q. Did you ever see the commitment for \$7 million? A. Yes. We had a letter commitment.

Q. One of the requirements was that the total cost of the venture was \$10 million? A. That is right.

* * *

162 BY MR. FRIEDLANDER:

Q. After you got the commitment in July of 1962, what did you do in relation to it, if anything? A. What did we do?

Q. Yes—you, personally. A. There was nothing for us to do at that stage of the game.

163 Q. What did Mr. Coyne do, if you know or if he told you? A. There wasn't anything for him to do at that stage of the game.

Q. Nor Mr. Rose? A. No.

Q. Was there anything for Mr. Davidson to do? A. Not until later, when we got ready to prove our point with the Fund.

* * *

185 BY MR. FRIEDLANDER:

Q. Can you tell us what conversations you had with Davidson at any time relating to what his occupation was? A. I mentioned earlier that when he was first introduced to us, we were told he was a public relations counsel and that he had in the past negotiated loans with the Pension Fund for other people.

Q. Who told you that? A. He told us. He had placed loans through the Teamsters Group.

MR. BRESS: What kind of loans?

THE WITNESS: Real estate loans.

MR. FRIEDLANDER: Please note that was a question by Mr. Bress.

MR. BRESS: The record will show that.

BY MR. FRIEDLANDER:

Q. When you say "real estate loans," what loans did he say he had gotten, if any? A. Specifically?

Q. Yes. A. I couldn't tell you the names and addresses of them.

Q. Did you check to verify whether or not he could do what he

said he could do? A. I took him at his word. I had no reason to doubt his word.

Q. Did you at any time during this period check to see if he was 186 a real estate broker? A. No. I don't generally go around checking people.

Q. That is generally. Did you do it here? A. No. I took it at what he told me.

Q. He didn't tell you he was a real estate broker? A. He told me he had negotiated loans.

Q. You presumed he was a broker? A. I presumed he had the authority to do that.

Q. Did you presume he was a broker? A. Real estate loans—

Q. Did you presume—

MR. BRESS: Let him answer.

THE WITNESS: I presume he is, for the simple reason that to negotiate a real estate loan, you either have to be a principal insurance company, a bank, a savings and loan, a broker or a lawyer.

MR. FRIEDLANDER: Will you read the question?

(The reporter read the question as follows: "Did you presume he was a broker?")

THE WITNESS: I presume he had the authority; yes.

BY MR. FRIEDLANDER:

Q. You presumed he was a broker? A. Yes.

* * *

DEPOSITION OF EDWARD C. BALTZ

106 BY MR. FRIEDLANDER:

Q. At this meeting, was the Madison property discussed in your presence? A. It was at one of the meetings; yes.

Q. Thinking back to the meeting at which it was discussed, do you remember the substance of what was said? A. It was relating then to getting a loan from the pension fund, I imagine, of the Teamsters Union, regarding the financing of this projected motel.

* * *

108 BY MR. FRIEDLANDER:

Q. Prior to that time, had you or any of your group, to your knowledge, attempted to obtain a permanent loan on a motel to be erected on that site? A. My only knowledge is that Mr. Coyne had had some conversation with Mr. Davidson prior to me getting into it.

Q. I mean other than Davidson, do you know of anybody else that had been contacted? A. By our group?

Q. Yes. A. Again, I wouldn't know.

Q. But you have no direct memory now of any contact with any particular group? A. That is correct.

Q. Can you tell us what Mr. Davidson said at that time? A. He indicated to us that he was in a position to secure funds from this pension union that Mr. Hoffa was connected with.

Q. You said "he indicated"? Do you mean he said that? A. He said he had gotten loans for other people and he thought he could get us a loan, and that was about the whole substance of it.

* * *

116 BY MR. FRIEDLANDER:

Q. In the letter of intent, there is a provision which refers to the joint venture and refers, I think, to this particular document. You know of no other document connected in this deal, except these two, do you? A. Not that I can think of right now.

* * *

119 BY MR. FRIEDLANDER:

Q. Do you recall when it was that you decided that you would be satisfied with a \$4,665,000 commitment on a loan rather than \$5 million? A. I don't remember the date, no, but there came a time.

* * *

123 BY MR. FRIEDLANDER:

Q. Do you recall what you did with the commitment in relation to the loan you obtained? A. The loan made by the American Security

Q. Yes. A. We borrowed the money ourselves with the commitment having a repurchase agreement. It was a sale and repurchase agreement by the Teamsters Union, but we had to guarantee—the four of us—the full amount of the loan we got from the American Security and Trust Company.

* * *

Q. I ask you if you know whether or not the commitment was connected in any way with this loan. If so, what was the connection?

A. It was used by the American Security, I guess you might say, as a partial part of the security.

125 Q. With a definite agreement— A. By the Teamsters Union to buy it back at a certain date.

* * *

127 BY MR. FRIEDLANDER:

Q. Did you ever at any time discuss with Mr. Davidson how much he would receive in cash in lieu of an interest, or by not taking an interest? A. I don't think that was ever discussed. It was always assumed that he would be a partner when he obtained the loan.

129

* * *

BY MR. FRIEDLANDER:

Q. There came a time, as I understand it, when you signed a letter indicating to him that he had no interest in the hotel. Do you recall that? A. That is right.

Q. Who suggested that you sign that, if anybody? A. I wouldn't know that, either. It came from the partners. He hadn't fulfilled his end of the contract.

Q. Who told you he had not fulfilled his end of the contract? A. I knew it as a fact.

Q. Would you tell me what he didn't do? A. He never obtained the loan for us.

Q. How much was it to be? A. \$4,665,000.

* * *

DEPOSITION OF MARSHALL B. COYNE

25 BY MR. FRIEDLANDER: * * *

Q. Did you make a presentation? A. Yes, sir.

Q. Did Davidson make it? A. No, sir.

* * *

26 Q. Well, before you went to Chicago did you have a talk with Davidson in reference to the presentation? How it should be conducted, and so forth. A. Well, as a matter of fact, yes. I wanted to

know, but he said he is not familiar with those things. He knows nothing about that sort of presentation, and I showed him what we had, and he said it looked all right, but with the experience we have in dealing with mortgage companies, we are pretty familiar with what they are interested in.

So I just made a presentation of all the information I thought was pertinent and they would be interested in.

* * *

29 BY MR. FRIEDLANDER:

Q. So during the time you met Hoffa and the time you went to Chicago you had a discussion with him relative to a fee, or commission, or whatever he was going to charge? A. Yes.

Q. Will you tell us what he told you he wanted for this service? A. He told me that instead of dollars for a fee, he would be more interested in an interest; that he would like to have an interest rather than dollars.

Q. Did he say why? A. Well, he felt that he wanted something that was going to give him an income, is the way he expressed it.

Q. Do you know at that time whether or not he was a real estate broker? A. No, sir.

Q. Did you ask him? A. No, sir.

Q. Did you think about it at all? A. No, sir.

Q. Did there come a time, then, when you were in discussion with him about his interest that he mentioned, what he thought his interest should be?

MR. BRESS: Will you fix the time now for this?

MR. FRIEDLANDER: The same conversation, between the Hoffa visit and the meeting in Chicago.

30 THE WITNESS: Yes. We thought that if he could get us enough of a loan that would pay for the land—no, no, no; not the land, the construction, the furnishings, the fees, the interest, and everything else, that he would like to come in on a one-fifth ownership.

BY MR. FRIEDLANDER:

Q. How much did you estimate the loan would have to be in order to have him be able to get a one-fifth ownership? A. At that time, \$5 million.

Q. And that is what your figures show? A. Yes.

Q. The computations you made indicated that? A. Yes.

Q. Was it an even five million or \$4,665,000? A. It was an even \$5 million.

* * *

32 BY MR. FRIEDLANDER:

Q. What happened there? A. The meeting that we had was that—and this is giving it to you in summary now—that if all of the conditions that we set forth were fulfilled, and we got \$5 million, and it was to pay for all of our costs, then, in lieu of a brokerage fee, we would give him a one-fifth interest.

* * *

34 BY MR. FRIEDLANDER: * * *

A. If he was to get a loan, and if all the terms and conditions that we had set forth were met, then we would enter into this arrangement.

Q. Did you reduce to writing at that time these— A. No. As a matter of fact, we had not reduced it to writing; no.

Q. Was there any memorandum made by you or anybody in your group? A. I would say no.

Q. So when you went to Chicago you had an oral understanding that had not been reduced to writing in memorandum form or otherwise? A. That is exactly correct.

Q. Had you advised Davidson his demands had been met? A. If he was to agree to the conditions that we had set up, that we would agree to bring him in as a one-fifth interest.

Q. One of the materials, as I understand it—you correct me if I am wrong—you had to mortgage out, so to speak, not only the building, but also on the furnishings in the hotel? A. And other costs not 35 including the land, all costs not including the land.

Q. Who was to be in charge of building the building at that time? Had you planned that?

* * *

A. We had nothing in mind and nothing was said.

Q. You had gotten together the figures for the cost? A. Yes.

Q. And had anybody else except Owen gotten you the land valuations? A. Yes.

Q. But other than that, you and Owen had really gotten all the information together? A. Right.

Q. What was Davidson supposed to do with the type of structure you put up? A. Absolutely nothing.

Q. Did you have any conversation with him about—"Suppose you put up a more expensive building"? A. Not at that time.

* * *

36 BY MR. FRIEDLANDER:

Q. Did he say at that time if you decided that he wasn't entitled to anything because it didn't meet your requirements, it was all right 37 with him? A. He never said that.

Q. Let me find out this: Had you given him a figure that you would need in order to "come out"? A. We said \$5 million.

Q. So according to the oral understanding, if he produced a loan of \$5 million then he ought to have a one-fifth interest? A. That is exactly what we said.

* * *

BY MR. FRIEDLANDER:

Q. I understand you required that for him to get a one-fifth interest he produce or procure a \$5 million loan. A. Right.

Q. However, if the \$5 million loan was not sufficient to pay all the costs, excepting the land cost, then he wasn't to get the one-fifth interest. A. No. We didn't say that.

* * *

38 A. Between the estimate that Mr. Owen and ourselves had made we were reasonably certain that with the land not in the configuration that other items would be covered by the \$5 million. However, if they were not and it overran, or if the overrun was within areas that are not too grave that we all would put up our proportionate share and that we would all contribute the amount needed for the motor hotel.

* * *

39 Q. And that was all understood and agreed to before you went to Chicago? A. It was understood and agreed to, reasonably so; yes.

Q. Is there a doubt in your mind about the agreement on it? Was there some phase of what was stated that wasn't agreed to? A. I wouldn't think so.

* * *

Q. You went to Chicago; I think you told us about how you presented it and that he did not participate in the presentation. Was he present during that? A. He was present. He was there. There was a question because he was there. There was a question as to who are the principals, and to describe them, and I described the four of us as the principals and explained to them Hilda K. Wine's position and that she was acting as a straw.

* * *

41 A. I made my presentation and they asked me to leave the room. I left the room.

Q. Did Davidson stay in the room? A. Davidson left with me, and within a few minutes they called me back in the room and said, "We approve the loan."

So they approved the loan for \$5 million subject to an appraisal.

Q. What did you do next in relation to this loan? What did you do? They approved it subject to an appraisal? A. Right.

* * *

42 THE WITNESS: November, 1960, is when we got a commitment for \$4,665,000. So it had to be prior to November, 1960, that I went to Chicago, and I think it should be a little time before that.

* * *

47 BY MR. FRIEDLANDER:

Q. Then there came a time in November when you got this letter of commitment? A. No. There was an in-between time, because they came up with \$4,250,000.

* * *

50 BY MR. FRIEDLANDER:

Q. What were those conditions? A. So Davidson called Mr. Hoff again, and I explained to Mr. Hoff what we might be willing to accept; that we might be willing to accept the \$4,665,000 provided we had a moratorium of amortization.

* * *

Q. During the construction period?

* * *

51 A. This is from the time you would pay interest in amortization for the permanent loan.

And I had conversation with Mr. Hoffa, and we finally agreed that if we got about 30 months, and we figured it up in dollars.

He in turn said, "Suppose you call Lieberman and explain this to Lieberman."

* * *

Q. What did you tell Lieberman that you were—or tell Lieberman you wanted? A. A moratorium or a curtailman for 30 months, and I think that is the way it was worked out finally.

* * *

Q. Then you got your November letter? A. Yes.

Q. What did you and Davidson discuss in relation to his one-fifth interest? Was there any change in that? A. I don't think there was any change.

* * *

53 BY MR. FRIEDLANDER:

Q. From that time what happened? What did you do next? A. We were proceeding with our plans. We completed our plans.

Q. The plans were for the motor hotel, were they not? A. That is correct.

Q. And then somebody drew up this Baltz deposition Exhibit 1? You have heard that letter read several times. A. Yes.

Q. Looking at that paper, do you recall who drew it up?

MR. BRESS: You are showing him the letter of January 17, 1961?

MR. FRIEDLANDER: Yes.

THE WITNESS: This was drawn up by Sol Grossberg.

54 BY MR. FRIEDLANDER:

Q. Who employed him? A. Our group.

* * *

Q. You had him draw it up. At the time he drew it up, did you

all meet together in a room and have out the terms? A. No. I called Sol—

Q. Yes. A. —and I gave him this information, and I think he a number of times checked back with me and checked back with Thornton Owen.

55 BY MR. FRIEDLANDER:

Q. Do you see the first paragraph on the second page? A. Yes. That is right.

Q. Now was that a change from your original arrangement? It was, was it not? A. No, sir.

Q. Well, maybe I read it wrong. Would you read that out? A. "It is our further understanding that if the construction of the motor hotel and its related facilities requires more funds than the aforesaid first deed of trust of \$4,665,000, such additional financing shall be furnished by the four original owners with the understanding that any such monies advanced would be paid out of the first available funds of the joint venture before any distributions are made to the members thereof."

Q. Is that the original arrangement that you made before you went to Chicago with Davidson? A. Yes, sir. It is a little bit in conflict with what I said previously, but there is an explanation for this.

60 BY MR. FRIEDLANDER:

A. I do know that there was a requirement by the bank that there would be a buy/sell agreement between the Fund and the bank, of the note for 4665.

Q. Thousand? A. \$4,665,000.

62 BY MR. FRIEDLANDER:

Q. When this decision was made and you decided to have a hotel instead of a motel, what did you say to Davidson, if anything? A. Well, as a matter of fact, from the—he tried to stay very close to all of us and he would, if he was in the neighborhood, he would drop in.

63 Q. Did you talk to him about it? A. I am sure I did; yes.

* * *

67 BY MR. FRIEDLANDER:

Q. Let's go back, if we can now, to the period when you and your group had agreed to change from a motel to a hotel. Did you order new plans drawn? A. Yes.

Q. And I think we have already gotten the name of the architect.

What did you do with the new plans, just disregard the old ones? A. Stacked them, and changed architects and structural engineers at that point.

Q. Had you made many subcontracts for the motor hotel at that time? A. We many made subcontracts.

Q. And you had to cancel those? A. Yes.

* * *

72 BY MR. FRIEDLANDER:

Q. What was your arrangement with Davidson after you changed your plans to build a hotel which would cost a lot more? A. Yes.

Q. What was your arrangement with him? A. He was to arrange for an increase in the commitment based on the new plans and the new type of operation.

Q. Did he agree to this? A. Yes, he did.

73 Q. Can you tell me who was present when he agreed to it? A. I couldn't say that. It could have been all of us. I could have been alone the first time.

Q. Do you know when it was? A. No.

Q. Do you know where it was?

* * *

A. I couldn't say where the conversation took place; no; I couldn't tie it down.

* * *

87 BY MR. BURSTEN:

Q. Would you tell us when, then, sir? A. I think that I said previously to that that we started work on the motor hotel approximately February 1961, and about four or five months after that was when we decided that we were going to consider the change.

* * *

102 BY MR. BURSTEN:

Q. Who did you talk to for the first time, connected with the fund, in connection with the subject matter of obtaining an increase in your fund loan commitment? A. With Mr. Lieberman in Chicago.

* * *

107 BY MR. BURSTEN:

Q. Did you discuss the subject matter of change in concept and, accordingly, an increase in cost, with anyone connected with the Fund, other than Mr. Lieberman? A. We—I discussed that with the Board. When I made a presentation to them with all of the material in Chicago, I discussed it.

* * *

109 BY MR. BURSTEN:

Q. You advised them in your opinion the land and the construction of the hotel and the furnishings would all total \$10 million? A. Yes.

* * *

114 BY MR. BURSTEN:

Q. Mr. Coyne, following the presentation that you just testified to that you made to the Fund, wherein you requested the additional \$7 million, what action was taken if any in connection with your request for an increase? A. I made my presentation. The Board asked me to be excused. They then called me back in a few minutes and said, 'We approve the loan subject to the normal requirements of appraisal and agreement by Research Realty.'

Q. Did they write you a letter in connection with that approval?

A. They did.

* * *

134 BY MR. BURSTEN:

Q. What was done with that request? A. Well, we had a meeting at the bank. We had a meeting at the bank and we gave the bank our position, and our position was that the \$4,665,000 was not in existence any longer; that a commitment of \$7 million was in existence, and anything that had to do with the loan of 4665 or the commitment of 4665 didn't exist.

* * *

138 BY MR. BURSTEN:

Q. How did that meeting break up? What was the resolution at that meeting, if any? A. The bank agreed that we had a \$7 million commitment; that the 4665 was out the window, and we had an additional nine months beyond the expiration date of the buy/sell agreement and that we would have to satisfy the 4665; that we would have to satisfy the 4665 that we were indebted to under the construction loan.

* * *

DEPOSITION OF I. IRVING DAVIDSON

9 BY MR. KEOGH: * * *

Q. In What capacity? A. I'm a registered foreign agent with the Justice Department for the Government of Nicaragua.

Q. Registered foreign agent? A. Foreign Agent. And I have been since 1955.

Q. Were you also a registered foreign agent representing any 10 other country? A. Yes.

Q. Which ones? A. I'm now registered for the Israel Aircraft Industries of the Government of Israel, I'm a registered agent for the country of Ecuador, and I am their sugar lobbyist, registered here in Washington. I am also a registered agent for the Indonesian National Army.

That's about it for the moment.

* * *

11 Q. And you are presently acting as a foreign agent for these countries? A. Yes, I am.

* * *

22 BY MR. KEOGH:

Q. Now, you are personally acquainted with the defendants in this action? A. Yes, I am.

Q. Mr. Baltz? A. Yes.

Q. Mr. Rose? A. Yes.

Q. Mr. Coyne? A. Yes.

23 Q. Mr. Thornton Owen? A. Yes, sir.

* * *

A. * * * Mr. Marshall Coyne took me to meet Mr. Thornton Owen about the time we decided to get together to enter into a business venture where Mr. Owen would be involved. I would imagine this would be—

Q. About when was that? A. I would imagine it would be in early 1959.

And since that time, I had many meetings with Mr. Owen, late '58, but many times in '59 and since.

* * *

30 BY MR. KEOGH:

Q. Now, when and where was it that you had your first discussion with Mr. Marshall Coyne with respect to the financing of a project that he was interested in: namely, the Madison Hotel project, or the Madison Motel project? A. Mr. Keogh, to the best of my recollection, when Mr. Coyne and I got very friendly, socially, politically, and trying to attempt to do business together, it would have been the latter part of 1958 and 1959.

* * *

32 A. Marshall showed me, took me to the corner of 15th and M Streets, Northwest, the present site of the Madison Hotel. At that time, it had a wall around it that was up off the ground, and it had been, I believe, the Episcopal Eye, Ear & Throat Hospital, that had been demolished. To the best of my recollection, Mr. Coyne told me that he and a group, and his group— He explained to me that he was in a group with Mr. Thornton Owen, Mr. Eddie Baltz, and Charles Rose in various commercial ventures, and that they owned this property, and they had had it for some time, and they wanted to put it to use. And he thought that if a hotel could be put on that property, as he called it, an—

Q. A hotel or a motel? A. He called it an in-town hotel or motor hotel. The exact terminology I don't know.

But he thought that an in-town hotel or motor hotel would be a big money-maker and something very good for Washington, D.C. And he said, "Irving, if you can help us to get the financing for this property, you wouldn't have to worry any more for the rest of your

life. It would be a tremendous thing."

And he said, "There's several things we can do with this property. We can build a hotel. We can build an office building. But 33 the most important thing is the financing. Now, I know you have sources of financing, and if you can help my group get financing, it will be the smartest, greatest move you ever made." He said, "There are four of us in this group."

I said, "Marshall, I thought"—I had heard about his group. He had been engaged in a number of real estate ventures, and these men are the top men in Washington, D.C., men like Baltz and Owen's reputation preceded them.

I said, "Marshall, I thought there were five of you. Where does Ned Bord fit into this picture?"

He says, "I'm throwing Ned Bord out. He's not the caliber of man that we want in with our group, and you can take Ned Bord's place with our group if you can get us financing for our different business ventures."

Q. What did you tell him? A. I said, "Well, Marshall, you know I'm not in the league of Ed Baltz or Thornton Owen or yourself. I don't have that kind of money." I said, "I'm just getting sound economically, and I'm a neophyte, I'm not a realtor, but I'd like to be associated with this group in anything that they do, specially somebody like Ed Baltz, and I would be very proud to be a member of such a group. But I cannot carry my own end, and I don't like any free rides. I would have to earn my way."

34 He said, "We don't give any free rides. You would earn your way if you could help us get financing."

Q. What did you tell him? A. I said, "Marshall, I would be very happy to try." I said, "Well, hell, with Ed Baltz and Thornton Owen"—to show my ignorance of the savings and loan business—"they have all the money they want in Perpetual. That's one of the largest savings and loans in the United States."

He said, "Look, everybody needs money. Even your friend Murchison needs money at times. He runs out of money." He said, "Most of our sources at this present time have dried up. If you could find us a good source of financing, you would earn your way. We

wouldn't be giving you anything. You would be doing us a favor."

Q. What did you tell him? A. I said, "Marshall, I'm very proud, and I'll look into the matter. As you know, I have a number of sources to obtain financing."

Q. Did you tell him what your sources were? A. Yes.

Q. What were they? A. Well, I had a number of foreign sources.

35 Q. Like what? A. I had the official family of Nicaragua, that were making investments in the United States.

Q. Who else? A. I was doing some work for a very well known family in Texas, the Murchison brothers, in Washington, D.C., as well as in Central America, and I had a very good social relationship with the Murchison brothers.

Q. Who else? A. And also, I was very friendly with some Swiss bankers with whom I had dealings with when I was doing business for the Israeli military and the Government of Nicaragua. I had some very good Swiss banking connections.

Q. Who else? A. During my conversation at this time, explaining who my different connections were, Marshall Coyne said, "Well, Irving, you are forgetting one of your best friends, Jimmy Hoffa, and the International Brotherhood of Teamsters. That's the best source of funds for this type of project in the United States."

Q. What did you say? A. I said, "Yes, Marshall, I do know Jimmy Hoffa very well. You have met him with me several times, 36 and that's another source I can explore. However, Marshall, if you go to the Pension Fund, that's immediately going to bring the Justice Department and the FBI looking over your shoulder, because every loan made by the Teamsters is highly scrutinized, because Mr. Hoffa is a very controversial man. I don't think that Mr. Ed Baltz and Thornton Owen are going to want to take money from the International Brotherhood of Teamsters. So you'd better get that cleared with your other partners."

Q. Did you have an entree to Mr. Hoffa and the Teamsters Fund at that time? A. Well, Mr. Keogh, I don't know if you should put it that way. I'm a friend of Mr. Hoffa's, and prior to that time, I have never gone before the Pension Fund to get anybody any loans. But

I'm a personal friend and a social friend of Mr. Hoffa's. I was then and I am now.

Q. You never arranged any financing for anybody or any loans with the Teamsters Fund through Mr. Hoffa? A. Prior to that time, never, Mr. Keogh—and I say that unequivocally.

* * *

50 BY MR. KEOGH:

Q. Now, you testified that this was, the first time you discussed this matter of financing with Mr. Coyne was while riding in an automobile in Washington. A. No. With regard particularly to the Madison?

Q. Yes. A. But we talked about other things.

Q. Yes. But was that the first time that you talked to Mr. Coyne about the financing for the Madison? A. Yes.

Q. Yes. Now, you can't be mistaken about that? A. No. When he showed me the lot, when he showed me the site, —

* * *

54 BY MR. KEOGH:

Q. Did there come a time, after you returned from the convention to Washington, D.C., that you met with the defendants in this case with respect to you securing a loan from the Teamsters Union, with which Mr. Hoffa was connected, for the construction of the Madison Hotel? Yes or No. A. Yes.

Q. Where was the meeting? A. Mr. Marshall Coyne, after many preliminary discussions with me, and after my taking him to visit Mr. James R. Hoffa, and after my investigation of Marshall Coyne, and seeing the type of buildings that he had built in the District, and after he personally took Mr. James R. Hoffa on a tour of the building that he had constructed in Washington, D.C., and after my 55 analyzing, being a public relations man, that I thought that this would be a very good loan for the public image of the Teamsters to make such a loan—

Q. Did you have— A. —to make such a loan to such a group, and I decided in my own mind that this would be a good thing for the Pension Fund and for myself, I arranged for Marshall Coyne to meet James R. Hoffa.

After Mr. Hoffa, as a one-sixteenth of the trustees, because of my friendship with him, decided to give me his time and effort and listen to an idea, he thought that perhaps this was a type of financing that the Teamsters' Pension Fund would entertain.

After Marshall was quite impressed personally with Mr. James R. Hoffa, covering his buildings from cellar to roof, he then arranged for a meeting with myself and the principals.

Q. Was the meeting held with the defendants? A. Yes.

Q. Where? A. It was held in the office of Mr. Ed Baltz.

Q. What did you undertake to do for the defendants at that time, with respect to getting money or a loan from the Teamsters Fund that 56 you referred to? A. My assignment.

Q. Assignment by whom? A. By the group. Because everyone had something to say—

Q. You mean the defendants? A. From the defendants.

Q. Yes? A. —was to help assist them in getting financing for this motel that we anticipated building, to get financing.

Q. From whom were you to get the financing? A. Well, wherever I could get it. But it boiled down to, after my investigating several other sources, and Marshall Coyne's insisting that the quickest and the best way to get it was if I could help them get it from the International Brotherhood of Teamsters' Central States Pension Fund, that would be the place that he would like to see me get it, because he informed me that they were making hotel and motel loans all over the United States, more than any other lending institution.

Q. Did Mr. Coyne at that time know that you had an affiliation with the Teamsters Fund and Mr. Hoffa? A. Mr. Keogh, I have never had any affiliation with the Teamsters Fund. I have never received 5 cents from the Teamsters Fund.

Q. Did you have any affiliation with Mr. Hoffa? A. My affiliation 57 is friendship. He was my personal friend, and he still is.

Q. Isn't it a fact that Mr. Coyne knew that you were friendly with Mr. Hoffa? A. Yes, sir.

* * *

Q. Did there come a time when they asked you to arrange a loan with the Teamsters Fund? A. They asked me to try and get, assist

58 them in getting some financing for 15th and M. It boiled down to—

Q. From whom? A. —where all the parties agreed—

Q. From whom? A. Mr. Baltz agreed, Mr.—

Q. I'm not asking you that. From whom? A. To help them get the financing?

Q. Yes. A. They specifically asked me if I wouldn't arrange a meeting whereby they would present a proposal to the Central States Pension Fund, to request financing for such a project. That is correct.

Q. And did you do it? A. Yes, sir. Marshall Coyne and I appeared before—

* * *

60 BY MR. KEOGH:

Q. Now, Mr. Davidson, to go back: Would you please tell us what the defendants requested you to do at this meeting that you referred to? Fix the time and place, and what you told them you would do, —

A. Okay.

Q. —and what you did do. A. What I tried to do.

Well, Mr. Keogh, after it was determined by all of us, after I made my point and—

Q. Will you fix the time first, so we'll know? A. Well, I'll have a way to tell you, a general time, I'll have a way to tell you.

After I told Mr. Baltz and Mr. Owen and Mr. Rose that they could expect—that there was nothing wrong with the loan, it was perfectly proper, and there would be nothing in the obtaining—that would have to be done to obtain this loan that was not legal, that they would still, they still must expect that the Justice Department would come in and talk to them or harass them to find out, to investigate the loan completely.

Then, Mr. Baltz and Mr. Owen said, "We don't care where we borrow money from, as long as it's an honorable loan. It, makes no difference to us." And when I made my point, and they told me that they understood that—and Mr. Baltz said he definitely understood it, because he said at his stage of life, he didn't need any headaches, but it was a good, clean loan; he wouldn't be a part of anything that wasn't proper—to go ahead.

So then, I said that I would go out—and this is what my job was, to earn my position with the group. They asked me to join their group to assist them in getting, helping them to get the financing for this hotel or motor hotel, whatever, in-town hotel, or whatever you call it.

Q. To get this loan for them, this money? A. Yes, the financing.

* * *

65 BY MR. KEOGH:

Q. Prior to this first meeting with these four defendants, you had no arrangement of any kind with any of the defendants about financing?

A. You mean no—

Q. For the motel. A. You mean I did not have an oral—something in writing?

Q. You had nothing, no oral arrangement or any arrangement of any kind with these defendants, other than the first meeting with the defendants, when you were apprised as to what you were to do?

MR. BURSTEN: Is this a question, Mr. Keogh?

MR. KEOGH: Yes.

THE WITNESS: Mr. Keogh, I'd like to answer that.

I always had an understanding, from the first time that I talked with Marshall Coyne, which was very early, the first time he showed me the lot when, as I told you in my previous testimony, that he said that his group of four would move over and make me the fifth partner, an equal fifth partner, if I can open up new sources of financing.

* * *

69 BY MR. KEOGH:

Q. I'm merely trying to get the date that you first discussed financing with Mr. Rose. A. I would say, to the best of my recollection, in 1959.

Q. What was the discussion, and where did it take place? What did he say to you, and what did you say to him? A. We were discussing my assisting them in getting financing. I remember this conversation now, because not only was he interested in my trying to get him some assistance in financing a motel, but he told me he was

working on a project in Baltimore, and would I think about getting some assistance in financing an office building in Baltimore also. And he gave me some drawings, and—

Q. I'm only interested in your discussion with Mr. Rose about—

A. I would say—

70 Q. —the financing. A. Of the Madison?

Q. Of the Madison Motel. A. I would say about, to the best of my recollection, 1959. Sometime in maybe early '59.

Q. What was the discussion? What did he say to you? What did you say to him? A. To the best of my recollection, he said, "Irving, if you can get this financing, it will be a great thing. You won't have to worry about income any more, and your daughter will have an annuity for the rest of her life. You won't have to be in so many deals. And you ought to really give this, put your best foot forward, and forget about all these deals and traveling all around the country, and concentrate on helping us to get this financing for this motor hotel."

Q. Did he tell you from whom, or did you tell him from whom or where you were going to get it? A. I believe at that time we discussed several places. But it was in his mind, I believe, to get it from the International Brotherhood of Teamsters. But I can't specifically say that he directed me to get it at the Teamsters, when I can say that Marshall Coyne did.

Q. Now, Mr. Davidson, your discussion with Mr. Rose at that 71 time was no different, in substance, than what your discussion was with Mr. Coyne with respect to the financing? A. More or less, that's correct, Mr. Keogh.

* * *

73 BY MR. KEOGH:

Q. Prior to your first meeting with these four defendants that you referred to at Mr. Baltz's office, what services had you performed in securing this loan from the Teamsters Union, if any?

A. Prior to the meeting—?

Q. —you had with the four defendants at Mr. Baltz's office.

A. What services?

Q. What services, if any, had you performed in getting the loan 74 from the Teamsters Fund? A. The services that I had performed

were to determine in my limited way, not being in the finance business, if the Central States Pension Fund would entertain such a loan in Washington, entertain such a loan, and the services I performed was to get a meeting between Mr. Hoffa and Mr. Coyne, and give Mr. Hoffa some background on Roscoe-Ajax and the gentlemen involved.

Q. And did you do that? A. Yes, I did.

* * *

76 Q. The question is, What services did you perform at the request of Mr. Coyne prior to the convention, in connection with getting this loan? A. I introduced Mr. Marshall Coyne to Mr. James R. Hoffa,—

Q. Where? A. I introduced—I took him to dinner one day at Duke's Restaurant when Mr. Hoffa was there having dinner with a group of friends. And I asked Mr. Hoffa if I couldn't bring Marshall Coyne along, and he said, "Yes. Bring him." Then, on another occasion I brought him to Mr. Hoffa's office. Then—

Q. This was before the convention? A. Yes. Yes. Yes, Mr. Keogh.

Q. Go ahead. A. Then, I checked out Roscoe-Ajax as best as I could, to see—

Q. Meaning Mr. Coyne and Mr. Rose? A. Yes, Mr. Coyne and Mr. Rose.

Q. How did you check them out? A. I knew some people that they built for.

* * *

77 Q. How did you check them out? A. Then I asked people around town.

Q. Like whom? A. Businessmen around town. And everything I learned was most satisfactory, that they were a terrific, aggressive, good company.

I got to know Mrs. Coyne, and I had been to their home on New Year's, and Marshall traveled in a very fine set in the community, and he was well respected. I carried all that information in 78 my mind, correlated it, and then I felt that we would be doing the International Teamsters Pension Fund a favor if we could get this group to take their money. That's the way I looked at it.

Then, checking out Thornton Owen and Ed Baltz was very easy, because those men had impeccable reputations, and I learned about them, and I went down to Perpetual, and I got their little balance sheet and records on them that are there for the public on the tables there. I found out that Thornton Owen was a top man with, top appraiser, and the best reputation in this area. Then, I thought I could go to my friend and ask him for some advice.

Q. Do I understand, Mr. Davidson, that you were checking out these things that you learned from Mr. Coyne so that you could present the program to the Teamsters Fund, right? A. Or anyone else I was—

Q. Or anyone else. A. That's correct.

Q. So that you did, after you did check them out, you did go to the Teamsters Fund, and you gave them the background and told them the story, right? A. I didn't go to the Fund. I went to Mr. Hoffa. I went to Mr. James R. Hoffa, who was my friend and one of the 16 trustees, —

79 Q. Yes. A. —and I gave him a hypothetical case, and then I related it to these gentlemen. He says, 'Irving, that sounds like a very commendable loan, and I think that the Central States Pension Fund would entertain such a loan, especially with this caliber of men.'

I said, 'I'd like for you to meet Marshall Coyne.' This was before he met Marshall.

Q. Now, when was this? A. It was prior to the convention.

* * *

80 Q. Yes. Now, Mr. Davidson, when you were negotiating with these people, what was your occupation at the time? A. It was then and is still now, I'm a public relations counsel, and I am called upon to, depending on the need—and I render just service. Like I serve as an investment counselor for foreign investments in Nicaragua or Ecuador, —

Q. But what were your services to be in connection with securing this loan for the defendants? A. I was to be part of a team, and I was to assist in obtaining financing. But I'm not a mortgage broker, and I have never been a commission man. They asked me to help assist them in financing, in a partnership that they would form,

wherein I would—I want to be very specific about that—that I would be a member of a team.

Q. Why did they ask you, if you were not experienced in financing? A. I told Marshall Coyne that I had access to investment
81 money.

Q. Like what? A. Well, like I said in previous testimony, that I had a Texas group that invested money in deals, I had a Swiss group—

* * *

Q. And that you would be very happy to arrange financing through the Teamsters Fund? A. No, part two of your question, I never said I would be happy to arrange financing. I couldn't be sure that I could get any financing. All I ever said was that if I'd go talk to my friend Mr. Hoffa, he would entertain, give me an audience and listen to what I had to say, and if I had merit, he would do all he could to put me in the proper channel to have the Pension Fund entertain my loan.

Q. And you did talk to Mr. Hoffa about the loan. A. Yes, sir.

Q. And he acquiesced, he received it very favorably? A. In his opinion, he thought it would be a good loan for the Central States
82 Pension Fund to make and he suggested that we file, go to Chicago—file a loan and go to Chicago and ask for a hearing.

Q. And you testified that you were considering approaching various people for this particular loan, — A. Yes, sir.

Q. —other than the Teamsters? A. Yes.

Q. But you say you did not have any kind of a license at that time? A. To do what?

Q. To arrange financing. A. That was not my business. I was not in the financing business, real estate business, as such.

* * *

A. Mr. Keogh, I was asked to become a partner, and I
83 specifically stated to Mr. Coyne, and later on to Mr. Baltz and Mr. Owen, that at all times I must always be a full partner, and not in the light of a commission man, and so draw our contract. I would be a co-venturer, and they understood this fully.

Q. What were you to receive for your participation in this group? A. We had an oral and then a written agreement that if I

was able to assist them in getting the financing for this motor hotel—and it came down to a specific amount. It was finally reduced to a specific amount. If I was able to help them through my services to obtain this financing, then we would all put up a sum of money,—

Q. How much? A. \$5,000 each.

Q. Did you ever put it up? A. No.

—and then we would become co-venturers. Now, this plan was devised by Mr. Marshall Coyne and his lawyers. I never felt I needed a lawyer. I'm not a lawyer, and I believed in the honor and integrity of the gentlemen I was dealing with. I had no reason to believe that anybody was going to try and cheat me out of anything, if I performed the service, and I certainly wouldn't want anything if I 84 didn't perform the service. And then, when you're in a business deal with a man like Ed Baltz or Thornton Owen in Washington, D.C., you don't have to have any papers,—

* * *

BY MR. KEOGH:

Q. What were you required to do for this group? A. I was required to assist in getting the financing for this motor hotel.

85 Q. How much? A. —or motel.

It was reduced to a figure of \$4,665,000.

Q. From what? A. Originally, the gentlemen thought that they wanted \$5 million.

Q. So, they requested you to get a loan of \$5 million from the Teamsters Fund, correct? A. Yes. They asked me if I couldn't get a loan in the neighborhood of \$5 million.

Q. Now, can you tell us at what meeting this was discussed? A. Yes. This was discussed at a meeting when all the principals were there,—

Q. Where? A. In Mr. Baltz's— No, this was discussed with Thornton Owen first, when Mr. Owen had a general idea of what this facility would cost, and—

Q. Did there come a time when it was discussed with all the defendants present? A. Yes.

Q. Where? A. In Mr. Baltz's office.

86 Q. When? A. When we reduced it to this sum of 4-six-six-five, this was after the commitment was even issued.

Q. Isn't it a fact, Mr. Davidson, that you represented to them, and they requested you to secure a loan of \$5 million? A. Originally, they—

Q. Yes or no? A. Originally, they—

Q. Yes or no? A. They said they would like to have a loan in the neighborhood of \$5 million, and —

Q. Yes, and that was the figure that you requested from the Teamsters Fund, was it not? A. Yes. We applied for a loan, to help them in getting a loan of \$5 million.

Q. And how much did you get? A. Finally, the Teamsters, after appraisal, and so forth, granted them a commitment in a loan—in financing of 4-million-665-plus.

* * *

88 BY MR. KEOGH:

Q. What were you to receive for these services that you were performing? A. Mr. Keogh, I was to become a one-fifth partner with the four principals.

Q. In this— A. Yes. These four principals were the owners of the land.

Q. Yes, and you were to receive an interest in what? A. In the motel.

Q. In the motor motel. A. And after they were repaid for their land, and so forth, I would be a one-fifth partner in everything. I had an oral understanding with them for many months that knowing—I told them my financial position was such that I could never match dollars with these gentlemen. They said I wouldn't have to match dollars, if I got them the money they needed to construct this motor hotel. And they said in the neighborhood of \$5 million, which we applied for.

And I said, "Well, it takes money to operate, and" —

Q. What were you to receive for getting this \$5 million? Will you 89 tell us? A. I was to receive a one-fifth interest in the Madison Hotel, in the facility that we would build with this money.

Q. Which was the motor motel at that time? A. At that time—
but—

Q. No, was it? Was it or wasn't it?

MR. BURSTEN: He's trying to answer.

THE WITNESS: At that moment, —

MR. KEOGH: Yes.

THE WITNESS: At that moment, it was the motor hotel. But they were also contemplating building a building, —

MR. KEOGH: Now, fine. Now, —

THE WITNESS: —and I would be a one-fifth partner in whatever we did.

BY MR. KEOGH:

Q. What were you to receive this interest in the motor motel for?

A. For helping them to obtain the financing.

* * *

Q. Do I understand that you were to receive this interest in the motor motel for arranging the financing? A. For helping—

Q. Yes or no. A. I can't unequivocally say yes or no. It was 90 for whatever our group did as a result of the hotel, a one-fifth interest.

Q. What were you to receive for what you did? A. A one-fifth interest.

Q. Was that interest that you were to receive in the motor motel in lieu of commissions? A. Definitely not. It was for services.

Q. For services. A. Yes. No commissions.

* * *

99 BY MR. KEOGH:

Q. Let me ask you this question. Would you please tell us what the discussion was with respect to the financing at the first meeting between you and these four defendants? A. O.K.

Q. What did they ask you to do and what did you tell them or what 100 did you agree to do? A. When I entered the room and for the first time met these gentlemen and we had our general discussion—they knew before I arrived that I was considered somebody that they had been dealing with before through Marshall Coyne, and I thought I was with a group of partners, and it was made very clear to me by all assembled there that I was a member of this group and my job was to go out and find them some sources of financing so they could build

this hotel. Or any other structure that we wanted to get along with a hotel. And I was to assist and help them get the financing, find them a new source. They didn't care where the source was as long as I got them the financing.

Q. Did they tell you how much they wanted? A. Yes. They told me they needed approximately \$5 million.

Q. Did they tell you who they wanted you to approach for the money, the \$5 million? A. Yes. At that meeting, at that time, it centered around my going to try and get the financing from the Central States Pension Fund primarily.

Q. With which Mr. Hoffa was connected as a director? A. As a trustee. One of 16 trustees.

Q. Now, Mr. Davidson, at that meeting, in introducing you to the 101 group, did Mr. Coyne say to these people present that Mr. Davidson was a very close friend of Mr. Hoffa's and that you were in a position to arrange a loan of whatever moneys were necessary with the Teamsters fund? A. I don't believe Mr. Coyne used that language.

Q. Was it something like that? A. It was along these lines, that "I think that Irving, if he puts his best foot forward, can help us get some financing from the International Brotherhood of Teamsters."

Q. Through whom? Did he say because of your friendship with Mr. Hoffa? A. He didn't say that, but I believe it was obvious.

Q. Why was it obvious? A. He had met Mr. Hoffa with me and he had learned specifically from the lips of Mr. Hoffa that Mr. Hoffa thought this was the type of loan that the Central States Pension Fund would like to make, and the selling that I did was that he felt we had a chance.

Q. If that were the case and he had met Mr. Hoffa, why did he need your services to arrange the financing, if he had already met Mr. Hoffa and Mr. Hoffa thought it was a good loan, that they would like to have it? A. That is a very good question. He didn't need me. But he didn't go 102 in there without me. I mean, I don't control the fund, but I always felt I was a member of the team. I did a lot of work to try and obtain this financing from other channels.

Q. Now, you say you did a lot of work in obtaining the financing. A. Yes.

Q. Who did you approach besides the Teamsters fund in your attempt to secure \$5 million? A. Mr. Keogh—

Q. And in what manner? A. I'll tell you exactly.

I had some—I had had dealings in Switzerland, between two governments—with a bank in Switzerland which involved several millions of dollars, and during the course of my operations in this position of trust that I had I developed some very good friends in banking circles in Switzerland and they had told me that they were interested in investments in the United States. And I told this to Marshall Coyne and he told me to try and see if the Swiss group would be interested in putting up money on the Madison and keep the door open for other financing, because they are in a lot of deals. He says, "Our group goes into many things. If you have a good source," he says, "Irving, it will be 103 fabulous."

So I made some very strong efforts. In fact, I sent my partner that Marshall Coyne met—

Q. Who? A. A man by the name of Michael Koll-Neacher, who was my full partner in some projects in Central America which are very lucrative.

—to Europe, through whom I met these Swiss bankers, who had a high position of trust with his government, the Israel government, where he handled millions of dollars, and he went over there and he discussed this, and we left the door open for further discussions.

And I was to take Marshall Coyne over there, but Marshall wanted to move faster.

That was one source.

I went down to Nicaragua. The President of Nicaragua's widow had some money that was lying idle. In fact, I was instrumental in having her put about \$500,000 in cash in the Perpetual Savings & Loan, in Mr. Baltz's savings and loan institution, when they were going to take it out. And I went down to talk to her about investing some of her money in the United States with a good group.

Q. And neither of these attempts was successful? A. No. They 104 were in the talking stages. They were entertaining them.

I was investigating some law about what kind of guarantee she could get. At that time a new law came out about investments, in case the government down there, that was a little unstable, were overthrown, could they seize her assets in the United States, and if she was with American partners, they wouldn't be able to touch her investment up here.

Q. So you approached these two people and they never made any loans to this group, did they? A. No. We didn't follow through.

I also talked to the Murchison organization in Dallas, Texas, to see if they had—

* * *

108 BY MR. KEOGH:

Q. Now, will you please go back to the meeting, after the convention, with the parties at Mr. Baltz's office, when you were introduced to the other parties and it was indicated that you could get this \$5 million from the Teamsters fund. A. I was going to try. They authorized me to try.

Q. Yes. What did you say you could do or would do? A. I would take Marshall Coyne—after he had the application prepared I would take him and get him scheduled for the next meeting of the Central States Pension Fund, get him on the agenda, and he could present the application.

Q. And how did you do that? A. Well, we called the Central States Pension Fund—well, prior to the meeting we asked for applications. We received applications, and I turned them over to Marshall Coyne. And these are very difficult to prepare, and it took him some time to prepare them. And he said he would like to go before the trustees at the next meeting of the Central States Pension Fund, and it took a lot of time planning and what-not, and he asked me to get him on the agenda after he was prepared to go ahead. And I called Mr. Hoffa—

* * *

110 Q. Where did you call him—from the meeting? A. No. This is—I don't know where I called him from.

And I said, 'We're prepared to go before the Pension Fund.' He says, 'That's fine. There's a meeting'—and he gave me

the date. I don't recall, I believe it was in September. It could have been September of '60 or '61. Let's see. Yes. About September of '60. And we were scheduled and—

Q. Who arranged the scheduling—Mr. Hoffa or you? A. No. It was arranged by the secretary, Mr. Frank Murtha.

Q. But who asked Mr. Murtha to get this matter on the agenda after you called Mr. Hoffa? A. I did. I have occasion to go to Chicago quite often, and on one occasion I went up there and I told them that we were going to come before this board.

Q. Whom did you talk to? A. Mr. Frank Murtha. He is the secretary to the Central States Pension Fund.

Q. What did you tell Mr. Hoffa when you called him on the phone and told him you wanted to get this application for a loan on the Pension Fund's agenda? A. Well, I told him that, and he says, "That's fine. Get ahold of Frank and get it on the schedule. There is no problem."

112 Q. After you agreed or after it was agreed between the parties for you to arrange for this matter to be put on the agenda, that you called Mr. Hoffa. A. Yes.

Q. And asked him if he could get the matter put on the agenda, and he told you to call Mr. Murtha, Frank Murtha. Is that right? Yes or no. A. I can't answer that with a yes or no. I called Mr. Hoffa and told him we were going to, whether he wanted to or not.

Q. What did he say? A. He said, "Go ahead. Call"—I said, "I want to be sure of getting on"—

Q. So you did contact Mr. Murtha. A. Yes.

114 BY MR. KEOGH:

Q. * * * Now, isn't it true that you told Mr. Marshall Coyne that, if this deal was consummated, anything you got out of it by way of an interest in the motor motel, that part of your interest would go to Mr. Hoffa? A. That is a lie.

Q. That is not true? A. It is not true.

And, Mr. Keogh, Mr. Ed Baltz and Mr. Thornton Owen asked me specifically if there was anybody that was going to share in my one-fifth interest if they took or were successful in getting a loan from the Pension Fund, and I told them definitely not, because—

* * *

116 BY MR. KEOUGH:

Q. I will ask you a simple question. Isn't it true that you represented to this group that you were a close friend of Mr. Hoffa's? A. I did.

Q. Who was connected with this Teamsters fund; right? A. Correct.

Q. And you, in fact, spent considerable time—you and Mr. Coyne—discussing this matter with Mr. Hoffa; right? A. Correct.

Q. And didn't you represent to this group that Mr. Hoffa was interested in helping you get the loan, that he thought it was a good loan? A. Correct.

117 Q. That it would be good for the fund? A. Correct.

121 BY MR. KEOUGH:

Q. Isn't it a fact that you kept Mr. Hoffa apprised of what you were doing in connection with securing this loan through the Teamsters fund?

A. Yes. At the same time—

122 Q. Why were you required to advise Mr. Hoffa of your activities instead of dealing directly with the fund making the loan? A. I was not required. To answer your question, I was not required.

Q. Well, you testified that you did keep him apprised. Why did you? A. Yes. But I was not required to.

Q. All right. Then, why did you keep him apprised about your activities instead of dealing directly with the fund? A. I'll be happy to answer that.

Q. Well, answer. A. During the course of the consideration of this proposed financing by the Central States Pension Fund there was a lot of correspondence between our group and the man that handled most of the correspondence was Thornton Owen or Marshall Coyne, and they were very slow in getting answers, and so Mr. Owen called me down. There were some very simple things that had to be done in order for Mr. Thornton Owen and our group to use a commitment if we were successful in getting one, and he was exasperated because very simple answers he couldn't get out.

So I complained and—I had heard this criticism of the fund before, and I called up Mr. Hoffa and I complained that his Central States Pension Fund wasn't functioning properly, that they weren't getting out answers, and I thought that he ought to do something about it, because it was bad for my loan and the Central States might be getting a bad public image by other applicants and he ought to get those people moving to do things that ought to be done in the normal course of business.

Q. You told Mr. Hoffa this? A. Yes.

Q. What caused you to think that Mr. Hoffa was in a position to tell these trustees what to do and how to conduct the fund? A. I will tell you, sir.

Q. How? A. Mr. Hoffa, being one of the 16 trustees and president of the International, is very conscious of all criticism of the fund and the Teamster organization.

Q. Does Mr. Hoffa have control of the functions of this board of trustees for the Teamsters fund? A. He does not. He has one-
124 sixteenth of a voice.

Q. Then, why would you report this matter directly to Mr. Hoffa instead of complaining directly to the secretary of the fund? A. Mr. Hoffa was a friend of mine and I felt that I could talk to Mr. Hoffa. My friendship with Mr. Hoffa is such that any time I wanted to criticize the Brotherhood of Teamsters I felt free that I could pick up the phone and tell Mr. Hoffa what I thought about the Teamsters and anything I read in the press and he'd listen to me. I was a friend of his.

Q. You have answered.

And you have also testified that you were a close friend of Mr. Murtha's, the secretary to the fund. A. I did not say I was a close friend to Mr. Murtha.

Q. Were you a friend of Murtha's? A. I knew him. I never went out with him officially.

Q. But you never took it upon yourself to complain to Mr. Murtha, the secretary to the fund? A. Yes, I did.

128 Q. Did you arrange with or advise Mr. Hoffa that you and Mr. Coyne were going to appear before the fund? A. Yes, sir.

Q. On a certain date? A. Yes, sir. When I learned when the meeting was going to be.

131 BY MR. KEOGH:

Q. * * * Don't you understand whether or not you made an oral request to the board of trustees? A. I was introduced with Marshall Coyne as part of the team that came to make a request. Now, he did all the talking, because I'm not qualified—I wasn't qualified on the figures or the feasibility study. He did all of the talking. I may have interjected at one point during his presentation that there was a great need for hotel rooms and stopped right there. But beyond that I said nothing more.

* * *

136 Q. Did you ever call or contact Mr. Hoffa for information with respect to what the board of trustees was doing in connection with the application for the loan for the motor motel? A. Yes. I called Mr. Hoffa to ask for his help to move the Central States Pension Fund to get my group answers.

Q. Did you ever call Mr. Murtha in New York or write him in Chicago for information about the pending application for this loan?

A. Many times.

Q. Many times? A. Yes.

137

* * *

THE WITNESS: I called him many times about getting some action on our application.

137 I called because I was asked to call by Mr. Thornton Owen to expedite things. He said, "Irving, please call Frank Murtha." And several times I called him in the presence of Thornton Owen and Marshall Coyne.

141 Q. Would you please tell us, Mr. Davidson, why it was that all of your communications and dealings between you as a representative in connection with this application for a loan with the Teamsters board of trustees and all of your negotiations with Mr. Hoffa were oral? A. Yes

142 It was an understanding between Mr. Marshall Coyne and Mr. Owen and myself that all the correspondence with the fund would come through Mr. Owen and Mr. Coyne. I am not qualified. I do not know the real estate business or the financial business. I couldn't answer technical questions. I could never see where an opportunity would present itself where I would have to be called upon for anything. We have the best brains in Washington in the real estate and in the finance business. So there was never an occasion for me to be in direct touch with the fund at all from the time of my first appearance with Coyne. But when things bogged down and the Pension Fund got slipshod and were lax in their answering letters from Mr. Owen and we didn't know where we were, Mr. Owen called me up and said, 'Why kind of shop do they run there?' He was exasperated. And I felt bad about it and I called up Murtha and I had strong words. I still got no action. They must have waited four weeks—after Mr. Owen broke his back to get a certain document in a matter of 48 hours, it took them four weeks to answer, and they lost the paper. So I called Mr. Hoffa and I told him to clean the shop out, that they had a bunch of nincompoops out there who were slowing down good, efficient operations. And I did it many, many times. I felt it was a service I ought to do for my group in any way I
143 could.

Q. You were critical of the fund for the way they conducted their consideration of this application; correct? A. I was very critical.

Q. And isn't it a further fact that various members of the fund and the board of trustees of the Teamsters fund were displeased with you?

A. Yes. I'm sure that they were. But I don't know why.

Q. And isn't it true— A. Because I pushed them.

Q. Isn't it true that the only way that you could get through to the Teamsters fund or its secretary was through Mr. Hoffa? A. That is not true. I don't know what you mean by "displeased." I mean, I think they objected to my pushing them.

Q. Yes. A. Pushing them to give us answers to our letters. No personal enmity.

155 BY MR. KEOGH:

Q. Had you indicated to him or did you indicate to him that you could arrange to get financing for this motor hotel? A. I told Mr. Coyne that I would try to get financing for him but I could not guarantee it.

Q. Did you indicate to Mr. Coyne from whom you would get the financing? A. I indicated to Mr. Coyne that I had several sources of financing.

Q. Did you mention any of them? A. Yes, I did.

Q. Who are they? A. I mentioned a Swiss banking group; I mentioned a group in Central America; I mentioned a Dallas group; I mentioned possibly the pension fund.

Q. Which pension fund? A. The Teamster pension fund.

Q. At that particular time what was your occupation?

* * *

157 THE WITNESS: I was engaged in the public relations business.

BY MR. KEOGH:

Q. Were you engaged in any other type of business other than public relations? A. Yes. I have various investments which I service.

Q. Where did you operate your business from as a public relations man? A. From 1612 K Street, Northwest.

Q. Were you engaged in any other type of business at the time? A. I have various interests which I at all times take care of, and I had a representation business which is part of my public relations business.

Q. Were you engaged in any type of brokerage business at the time? A. No, I was not.

Q. Were you engaged as a mortgage broker? A. Definitely not.

Q. Were you engaged in the real estate business at the time?

MR. FRIEDLANDER: Are you asking him if he was a real estate broker?

158 MR. KEOGH: Real estate broker.

MR. FRIEDLANDER: Were you a real estate broker?

THE WITNESS: No.

BY MR. KEOUGH:

Q. Did you have any type of license, Mr. Davidson, to engage in any type of business at this time? A. I believe I answered that question previously. But I did have a business license in the District of Columbia for which I pay a fee for every year.

Q. How much? A. But I don't know the exact title.

Q. You mean an occupancy license? A. No. I believe it is a professional license. But I would have to check. I keep it posted in my office.

Q. Did that license authorize you to engage in any form of real estate or financing?

MR. FRIEDLANDER: I don't think that is a clear question, if you don't mind my objection to it on that basis. He said he is not a broker so we know he is not entitled to a broker's fee.

BY MR. KEOUGH:

Q. Let me ask you specifically. At that particular time did you have a brokerage license of any type issued by the District of Columbia relating to real estate or financing— A. No.

Q. —of real estate? A. No.

Q. Or mortgage financing? A. No.

* * *

Q. After you had this discussion on this particular occasion did there come a time when you told Mr. Coyne that you would be in a position to arrange the financing and get them some money? A. No. My language to Mr. Coyne was that I would try to assist them in getting financing.

Q. And did you? A. Yes.

Q. Did there come a time when you advised him what you would be able to do? A. I never advised him definitely what I could guarantee that I could do. But I exposed him to areas of financing that I thought would solve the problem.

Q. When you say you exposed him, you mean you told him what you thought you might be able to do to help— A. Yes.

Q. —in securing the financing? A. Yes.

Q. Did you tell that to Mr. Coyne alone or did you tell it to any of the other defendants besides Mr. Coyne? A. At that time Mr. Coyne

the first time. I did not know Mr. Baltz and Mr. Owen at that time, though I did know Charles Rose, associate of Mr. Coyne.

MR. FRIEDLANDER: He wanted to know—

THE WITNESS: Those are the other defendants.

MR. FRIEDLANDER: —did you tell any of them at this time.

THE WITNESS: No. They were not present.

MR. KEOGH: They were not present.

BY MR. KEOGH:

Q. What did you tell Mr. Coyne finally that you would try and do?

A. That I would try and open up some sources of financing that he was looking for.

* * *

165 BY MR. KEOGH:

Q. Did there come a time when you told Mr. Coyne that you would be in a position to arrange the financing for this motor hotel that you discussed? A. No. I at all times told Mr. Coyne that I would try to assist in arranging for a new area financing for him.

Q. Did there come a time when you did? A. Yes.

Q. With whom or from whom? A. At the direction of Marshall Coyne I made an effort with the group's consent to assist in the financing or attempt to get the financing for the motor hotel at 15th and M Streets.

* * *

169 Q. At any time prior to this meeting had you discussed this matter with Mr. Hoffa? A. Yes.

170 Q. On how many occasions? A. On many occasions—on a number. I'm a friend of Mr. Hoffa.

Q. Just answer. A. Numerous times.

171 BY MR. KEOGH:

Q. What were you to receive in this project if you were successful in perfecting the financing? A. Well—

MR. BURSTEN: Just a minute.

172 THE WITNESS: I don't understand your question. From whom?

MR. KEOGH: From the defendant.

MR. FRIEDLANDER: It is in writing.

THE WITNESS: From the defendants?

MR. KEOGH: Yes.

THE WITNESS: I had an oral—both an oral and a written understanding with all the defendants that I was going to join the group and be a co-venturer with them and be a partner with them.

BY MR. KEOGH:

Q. If you succeeded in securing the financing? A. If I was able to assist them in securing financing.

* * *

175 Q. But you did discuss this proposed financing with Mr. Hoffa on many occasions? A. Yes.

Q. Was Mr. Hoffa helpful to you in your endeavor to arrange the financing with the Teamsters, with the Central States Pension Fund? A. He was helpful in an advisory capacity.

Q. Now, how did he advise you? A. He advised me and Mr. Coyne to have a very good feasibility study made, and he advised us about the procedures for presenting an application for financing from the Pension Fund.

Q. And Mr. Hoffa was in frequent touch with you about your progress with respect to your securing financing? A. It was the other way around. I was in frequent touch with Mr. Hoffa.

Q. But you discussed the possibility of accomplishing this loan through the Pension Fund? A. Yes.

Q. And, of course, this went on over a long period of time? A. 176 That is correct.

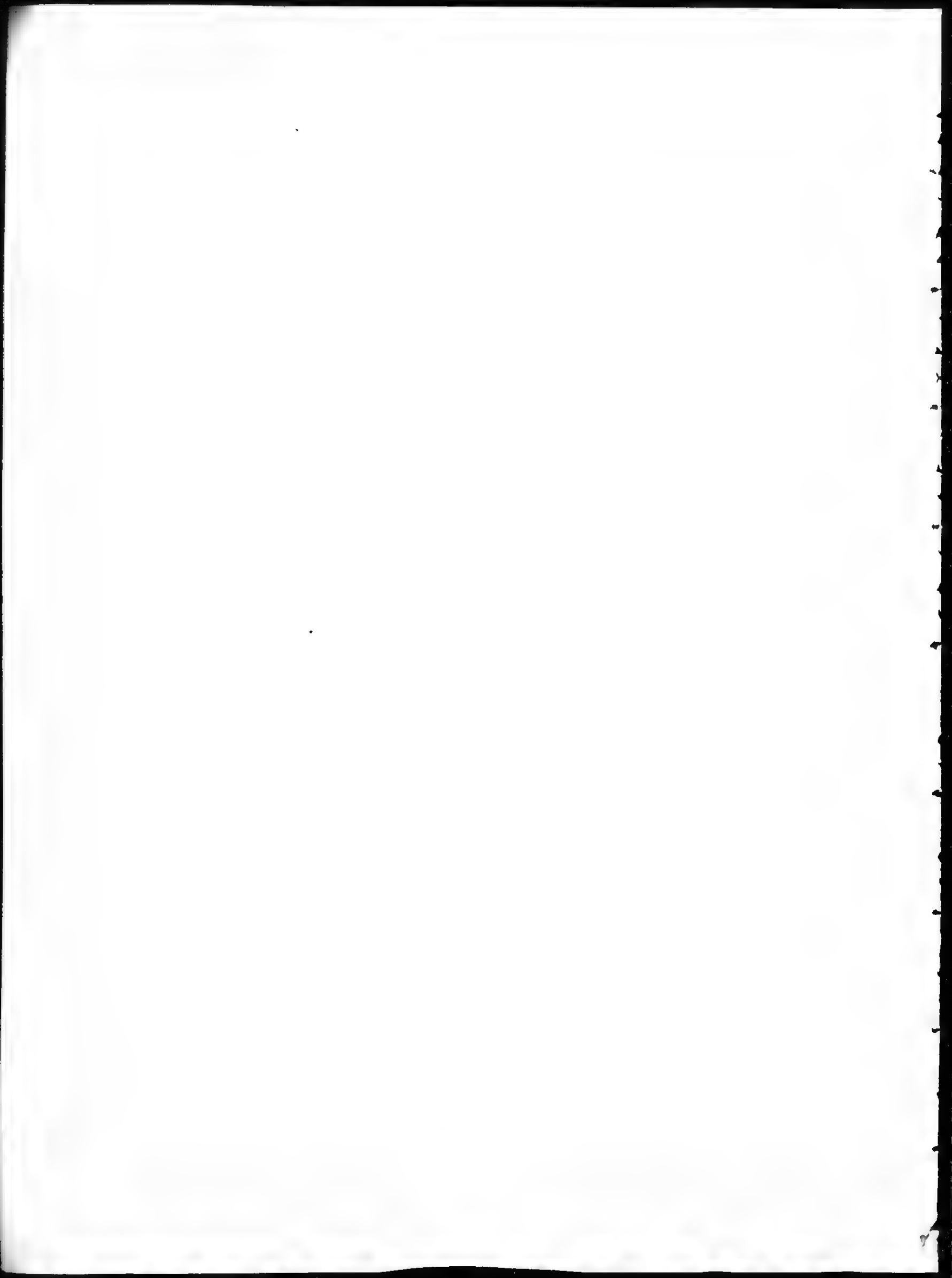
194 MR. FRIEDLANDER: You are speaking now of a meeting with all the defendants?

MR. KEOGH: Yes.

THE WITNESS: At that time the discussion was clarifying all that I had been discussing with Marshall Coyne with regard to getting financing for the construction of this hotel at 15th and M Streets, Northwest.

BY MR. KEOGH:

Q. Did you indicate that you would arrange to get the financing?



A. I would try to assist in getting the financing.

195 Q. What did you tell them? A. I told them that I would try and get the financing for the hotel and that I was glad to be in their group, and they acknowledged the fact that I -- if I helped them get the financing that I would be a one-fifth partner and that everything that Marshall Coyne told me they confirmed.

* * *

196 Q. Now, what were you to get in consideration of your effort to get this loan of \$5,000,000 or to receive?

* * *

THE WITNESS: I understood very definitely from all of my partners that I was to be a one-fifth partner for helping them obtain this financing.

* * *

Q. What were you supposed to receive a one-fifth interest in?

197 A. A one-fifth interest for assisting in the financing of that property, for whatever would be put on it. But at that time it is my recollection that we were talking expressly about a hotel, though an office building was mentioned.

Q. But your understanding was that you were to receive a one-fifth interest in the hotel? A. That is correct.

* * *

198 Q. You know they received a commitment from the Central States Pension Fund? A. That is correct.

Q. Did they ever receive any moneys from the Central States Pension Fund through your efforts? A. I don't know that they would receive any moneys.

Q. I am asking you. A. I don't know.

* * *

Q. And you helped them get financing but you don't know whether a loan was made of actual moneys? A. I say they did receive a commitment --

Q. Yes. A. -- for \$4,665,000.

Q. And your testimony is that you were to receive a one-fifth interest in this hotel project for your efforts in assisting them getting this commitment, is that correct? A. That is correct.

* * *

199 Q. Is it correct, Mr. Davidson, that you were to receive a one-fifth interest in the hotel project for your assistance to the defendants in trying to get this loan from the Teamsters fund? A. Yes.

206 THE WITNESS: A document was prepared which we all initialed which we agreed that when the hotel -- when the services and the assistance that I was to perform were performed that we would enter into a joint venture.

209 Q. You have a copy of this letter addressed to you from the defendants dated January 17, 1961? A. I do.

Q. Would you please look at that letter and state whether or not you can identify the letter as the particular letter in question addressed to you and signed by the defendants? A. I do identify it as such.

Q. And you identify this as your signature to the letter? A. Yes.

Q. And this letter outlines your proposed agreement? A. Yes.

220 THE WITNESS: Well, at a meeting we all got together and did sign that document dated January 17. We all signed it together. Now, we had known for a long time prior -- we had all understood, all five of us knew that a document would be drawn up at some future time. This had been discussed many times before, and we just got around to doing it at that particular date.

A. At the several meetings between the defendants and myself we had all talked about the type of organization we were going to have and we knew that a time would come when we would have to reduce it to writing, and the joint venture had been discussed among ourselves many times and Marshall Coyne and Thornton Owen asked me about

221 my financial position as they were trying to determine what would be to my best interest and to theirs also as they were worried that possibly the type of organization -- that there could be a possibility that the type of organization that they would set up might be harmful to me tax-wise and they were researching this for many months.

But we all knew that prior to this January 17th signing when we all got together that our group would be reduced -- our group's venture would be reduced to writing, we would have a contract among ourselves, and the entire contract was drawn up by Marshall Coyne's counsel with the cooperation of Thornton Owen, because there were things they had to know, such as how many children I had and things of that sort.

* * *

222 Q. What were you to do or what did you agree to do under the proposed provisions of these agreements for your alleged one-fifth interest?

* * *

223 THE WITNESS: For assisting in obtaining the financing for the proposed motor hotel I was to receive a one-fifth interest with my co-venturers.

BY MR. KEOGH:

Q. In what? A. In the hotel to be constructed at 15th and M.

* * *

226 Q. Can you tell us exactly in detail, Mr. Davidson, what your duties were to be with respect to the completion of this financing for the motor hotel in connection with the project? A. When it was decided to obtain, that we were going to try to get the financing from the Central States Pension Fund, I was to assist in every way that I could and all the other members of the group were to assist in every way that they could to obtain a commitment from the Central States Pension Fund which would enable us to construct the motor hotel.

227 THE WITNESS: The Central States Pension Fund issued a commitment to our group, and I recall the day we got the commitment that we had a victory drink in Mr. Ed Baltz' office. He was so happy about it. He said, "Let's all come down here and have a drink." We went down there and had a drink when they received the commitment. At that time I said, "Well, gentlemen, when do we execute this joint

venture now that we have a commitment?"

Marshall Coyne then said, "Well, look, Irving, we will issue it after we bank the commitment. We have the commitment but maybe it is not bankable. We have to get the actual money on this commitment."

228 So it took some time, because there are different rules in the District of Columbia that borrowers have to abide by, and it took a period of time between the time we actually received the commitment until they actually got a loan of moneys against the commitment.

But Marshal then said, "Don't worry, Irving, I'm sure we can work this commitment thing out."

And Mr. Owen said, "Oh, yes, we can work it out. We are going to take it into a bank in which I am a director and I don't think we will have any problem. After we bank the commitment we will execute --"

* * *

Q. Who did they bank it with?

* * *

THE WITNESS: To the best of my recollection, they banked it with the American Security and Trust Corporation.

* * *

230 Q. What was your relationship with the Central States Pension Fund when this commitment was issued? A. I was a borrower just like the other members of our group.

* * *

233 Q. Was the motor hotel that was discussed at these meetings and which was the subject of this letter ever constructed? A. It was.

* * *

234 Q. Is it your testimony that the present structure, the Madison Hotel, is the particular building that was under negotiation and consideration by you people at the time this proposed agreement was signed? A. That is correct.

Q. Isn't it a fact that the proposed structure that was originally discussed, namely, the motor hotel, the plans were changed to a different type of hotel? A. To the best of my recollection, the basic

plans were never changed. There were always minor alterations as to changing the number of suites. I recall some correspondence and help I gave our group about changing the number of suites that they had originally proposed, but there were alterations at all times like in any structure.

Q. Isn't it true, Mr. Davidson, that the proposed plans prepared by a particular architect for the structure discussed by you people, 235 by the so-called joint venture, were junked and abandoned and new plans prepared for the present hotel? A. I recall that architects were changed.

Q. For what reason? A. They were dissatisfied with the gentleman who had drawn the plans originally.

* * *

236 A. Approximately a year to 15 months after they started construction.

Q. Yes. A. And he stated to me that he was very unhappy to learn that construction costs were going way over the anticipated figures that Mr. Owen and Mr. Coyne had thought it would cost, that the hotel was running away with costs, and he was very disturbed because he had to dig into his personal -- and into his estate -- he had to disturb his estate, and he was very unhappy about it.

* * *

239 Q. And you were representing this group with the Central States Pension Fund and you do not know whether that loan was advanced? A. I was part of a group that received a commitment which enabled them to build a structure.

Q. Now, you knew that this agreement that was executed by you people made this a condition -- A. Correct.

Q. -- to your becoming a partner, right? A. That is correct.

* * *

244 Q. Yes. Mr. Davidson, you did testify that you secured this commitment from the Central States Teamsters Fund for this sum of money? A. That is correct. I helped to secure it.

246 Q. Did you have a license to engage in the financing business, a brokerage business in the District of Columbia? A. No.

* * *

254 Q. Wasn't demand made upon you to comply with the conditions of the contract of January 17, 1961? A. At the time they asked me

if I could help them get some additional funds, I had already compiled with the contract of January 17. They told me after they had banked the commitment that I had done my part, there were no further services required of me. They were very elated, and we had a meeting in Mr. Baltz' office. And after the banking of the commitment -- and at that time I recall I said, "Now that the commitment is banked" -- and we had another drink at that time, and Mr. Baltz' man or house man or chauffeur served us a drink there -- and I said, "Well, let's execute this joint venture now."

And Mr. Coyne says, "Listen, we don't have to execute the joint venture now, Irving. The corporation is already formed. The stock has been issued and we have all the stock in a vault and we are going to use that for financing. We may never have to go to the fund to get our permanent financing. We may make a better deal. But you have done your job; you are to be congratulated." Mr. Baltz shook my hand.

Q. So they never requested you to get additional moneys from the Teamsters Fund? A. Not at that time. About a year after Mr. 255 Baltz and I found out that they let the hotel run away with themselves.

Q. What do you mean by that? A. The hotel costs. After Mr. Owen and Mr. Coyne allowed the hotel costs to run away from their original projection of cost, it came as a complete surprise to Mr. Baltz how much out of line Mr. Owen's and Mr. Coyne's figures were, then he called me in and asked if I could help them get some relief. That was about 12 to 15 months after they told me I had completed all the terms and conditions of January 17.

Q. What did you tell them? A. At that time I told Mr. Baltz how unhappy I was with Mr. Coyne, especially about his treatment over the past several months of me, and how he had euchred me and tried to cheat me out of participation in the office building. And Mr. Baltz agreed with me that he hadn't treated me properly there. But after talking with Mr. Baltz, Mr. Baltz suggested to me that I go ahead and please for the sake of good order and getting some relief for him that I try and get him some additional moneys, and he wanted me to get paid for any additional moneys I got them above the four six six five.

So at his suggestion, and only because I wanted to please Mr. Baltz, and it was economically good for myself, because if these men had to
256 put in the additional two million three, I would have to wait until they were repaid before I could benefit from the profits of the hotel.

So it suited me for two reasons to go along; it was just good sense to try and help them.

Q. What did you do? A. So I suggested to them that I would try and go along for the sake of the team, that as long as we talked out our differences and we had a clear understanding as to where we all stood and where we were going I would try and help the group get additional financing.

Q. Now -- A. I'm not through.

Q. Excuse me. A. If I could be taken into the office building or be paid a public relations fee as suggested by Mr. Ed. Baltz.

Q. Finished? A. Yes.

Q. Now, Mr. Davidson, at that particular time, at the same period you put them on notice that you were very displeased with their conduct, correct? A. I told them I was displeased with Marshall Coyne's conduct.

257 Q. Yes. You told them that you were unhappy because you were being ignored, right? A. I was not being treated as a partner.

Q. And you knew at that time that you had not received a one-fifth interest in the hotel, correct? A. No, that is not so.

Q. What is so? A. After the commitment was banked and we had another meeting in the office of Mr. Baltz at which time he served us drinks, when I asked to put the joint venture into effect and I was prepared to give my \$5,000 and I said, 'Who do I give my five thousand to?' Mr. Coyne said, 'Irving,' and I remember two words because they are not in my vocabulary, he said, "now that contract is moot and academic." That was the word, it was moot, because I had already performed.

Q. So that you took the position that you performed? A. I had nothing more to do. I had nothing more to do. I was to sit back and wait.

Q. Did you get your one-fifth interest? A. They also told me the stock had been issued and it was going to be hypothecated for

further financing.

Q. What corporation are you speaking of? A. I believe my terminology should have been the joint venture or the corporation
258 where we were all partners had been formed and the stock had been issued and it was all together in a vault.

Q. And you say that you had made proffer of your \$5,000? A. Yes.

Q. To whom? A. To all five of the gentlemen there, and they said it wasn't necessary at that time.

Q. Why? A. Because the corporation or the joint venture had already been established, the stock had been issued, none of it had been distributed, it was held in a vault for safe keeping to be used possibly for further financing or to be used for financing. I don't know whether they were going to or whether they had already used it for financing. I had no fear at that time that anything was being done to me because of the calibre of men that I was dealing with. When that statement was in the presence of Ed Baltz and Thornton Owen, I had no reason to doubt these gentlemen.

* * *

259 A. I trusted these gentlemen completely. I had a document in my hand dated January 17 that spelled it out for me and I knew I had performed. I had no reason to question these men. I let them prepare it, the contract, and I had no reason to doubt that anyone would cheat me.

* * *

282 THE WITNESS: When I first felt that Mr. Marshall Coyne was trying to cheat me and was not the man that I thought he was, I began to do a little investigating and I found out that Mr. Marshall Coyne was under investigation by the United States Government, the FBI,
283 and the Justice Department, and the GSA for doing substandard work on a Federal project in California. When I saw the actual letters that were written to him by the several agencies of the United States Government, the letters were so damaging that I felt that perhaps Mr. Coyne could be guilty of the same things that the Government was accusing him of with my project, the one that I was interested in.

At first these complaints were hearsay and then I made it my business to get actual copies of these letters.

When I did receive actual copies of these letters, I became so frightened for my group and my association with Marshall Coyne that I took copies of these letters and gave them to Mr. Baltz for him to be apprised of the charges that were pending against Marshall Coyne. Then I started further investigation on my own and I found out that the last several jobs that Mr. Coyne had with the Federal Government had always wound up in lawsuits and at one time there were criminal charges being brought against Marshall Coyne.

Q. For what? A. For violation of the -- let me find the right words -- for not conforming to the contract that he had with the Federal Government.

* * *

286 A. I am trying to tell you.

When they wouldn't come up with certified cost figures so they could get money to get them out of their jackpot to the Pension Fund, the group that was going to help them, I saw something fishy there when they couldn't come up with certified cost figures. Then I began to feel maybe that something was wrong.

* * *

290 A. Mr. Coyne refuses to recognize, and only Mr. Coyne, so far as I have been told, that I am a partner after doing all the work to help them get their money.

I said, "This is the son of a bitch that is trying to cheat me out of my rights in the Madison Hotel. Don't introduce me to him."

* * *

305 A. Because I asked. I called the general counsel of the Pension Fund and I said, 'Why is this commitment being held up?'

And he said, "Mr. Davidson, we have repeatedly asked Mr. Owen and Mr. Coyne for certified costs. According to our laws of this Pension Fund we cannot make that additional loan because it doesn't meet the criterion of the Fund. We would be willing to help if they would show us where we could justify making the loan. If he shows where that hotel cost \$10,000,000, we could honor their request for an additional two million three but we must have our costs certified."

* * *

[Filed May 19, 1964]

STATEMENT OF MATERIAL FACTS

1. Plaintiff sues to enforce an alleged agreement whereby, conditioned upon plaintiff performing services in obtaining a commitment for a first deed of trust loan on real estate in the District of Columbia, he would as compensation for and in consideration of those services, receive from defendants a one-fifth interest in a joint venture to be formed by defendants to own said real estate and to construct and operate a motor hotel project thereon.
2. Plaintiff claims he performed the services aforesaid and obtained a commitment for a first deed of trust on the subject real estate in the sum of Four Million Six Hundred Sixty-five Thousand (\$4,665,000.00) Dollars from the Central States Southeast and Southwest Areas Pension Fund, and therefore, as compensation for and in consideration of those services, he is entitled, pursuant to the said agreement, to a one-fifth interest in the said joint venture.
3. The plaintiff is not and, at all times material hereto, was not a licensed real-estate broker within the District of Columbia.

KEOGH, CAREY & COSTELLO

/s/ David G. Bress

Attorneys for Defendants

[Filed, May 28, 1964]

PLAINTIFF'S COUNTERSTATEMENT OF MATERIAL FACTS

1. This complaint is to establish an interest in real estate, for breach of fiduciary relationship arising out of a joint venture, and for an accounting. The Plaintiff was never engaged in the real estate business nor was he a mortgage broker. He was engaged as a public relations counsel. He became a member of a joint venture by oral agreement long prior to January 17, 1961 and, as a member of the group, arranged for one of the other members of the group to apply

for a loan from a pension fund. No. 1 of the material facts filed by the Defendants is incorrect.

2. The statement of material facts—paragraph 2—is basically incorrect. The correct facts are that the Plaintiff became a member of a joint venture under an oral agreement, and he arranged to assist in the obtaining of financing for a motel project to be erected on land purchased by the Defendants, but which was put into the joint venture subject to certain terms and conditions for repayment for said land; and, as a member of the joint venture, he assisted the defendant Marshall B. Coyne in presenting an application for a permanent loan, and such permanent loan was granted and a commitment was issued. The commitment was used by the joint venture in borrowing funds on a construction loan, and thereafter the Defendants—without consultation with the Plaintiff—decided to erect a hotel instead of a motel, and prepared a contract which was supposed to have represented the agreement of the parties and which was signed by the Plaintiff and the Defendants. The hotel has been erected, but the Defendants have denied the existence of the joint venture.

At no time has the Plaintiff ever acted as a real estate broker or mortgage broker.

3. Plaintiff admits the statement of material fact, No. 3.

FRIEDLANDER & FRIEDLANDER

/s/ Mark P. Friedlander

[Certificate of Service, May 27, 1964]

[Filed, June 8, 1964]

ORDER

Upon consideration of defendants' motion for summary judgment, and after oral argument thereon in open court, it is by the Court this day of June, 1964,

ORDERED, that the said motion of defendants for summary

judgment dismissing the above captioned action is and the same is hereby granted, and it is further

ORDERED that judgment herein be and the same is hereby entered in favor of the defendants and against the plaintiff, and that defendants recover their costs from the plaintiff and have execution therefor.

/s/ Judge Curran

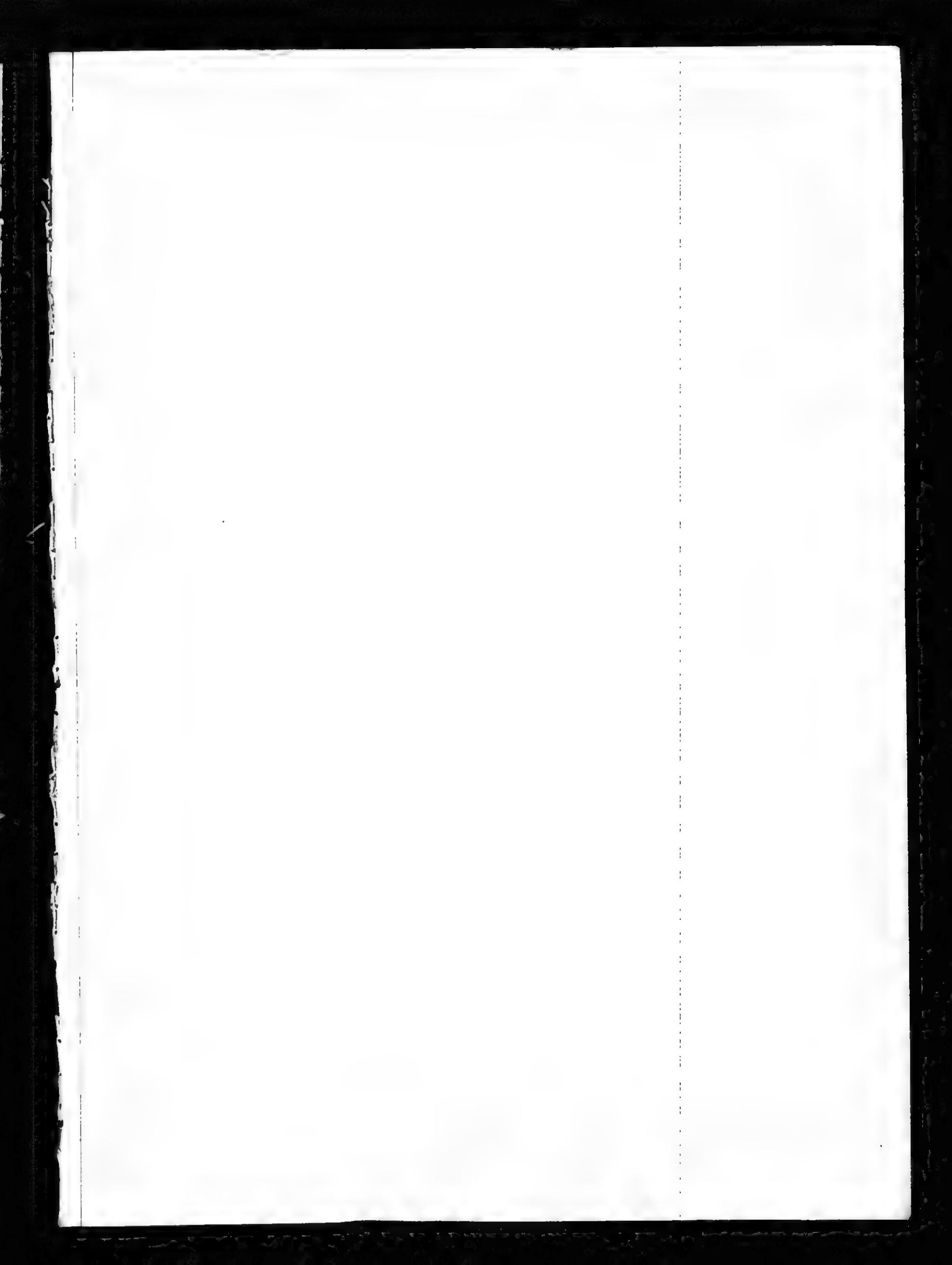
NOTICE OF APPEAL

Notice is hereby given this 11th day of June, 1964, that I, Irving Davidson hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 8th day of June, 1964 in favor of Marshall B. Coyne, Charles Rose, Edward C. Baltz and Thornton W. Owen against said I. Irving Davidson.

FRIEDLANDER & FRIENDLANDER

By: /s/ Mark P. Friendlander

Attorney for Plaintiff
1210 Shoreham Building
806 - 15th Street, N.W.
Washington, D.C. 20005



BRIEF FOR APPELLEES

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,800

I. IRVING DAVIDSON, *Appellant.*

v.

MARSHALL B. COYNE, CHARLES ROSE, EDWARD C. BALTZ,
THORNTON W. OWEN, *Appellees.*

Appeal from the United States District Court for the
District of Columbia

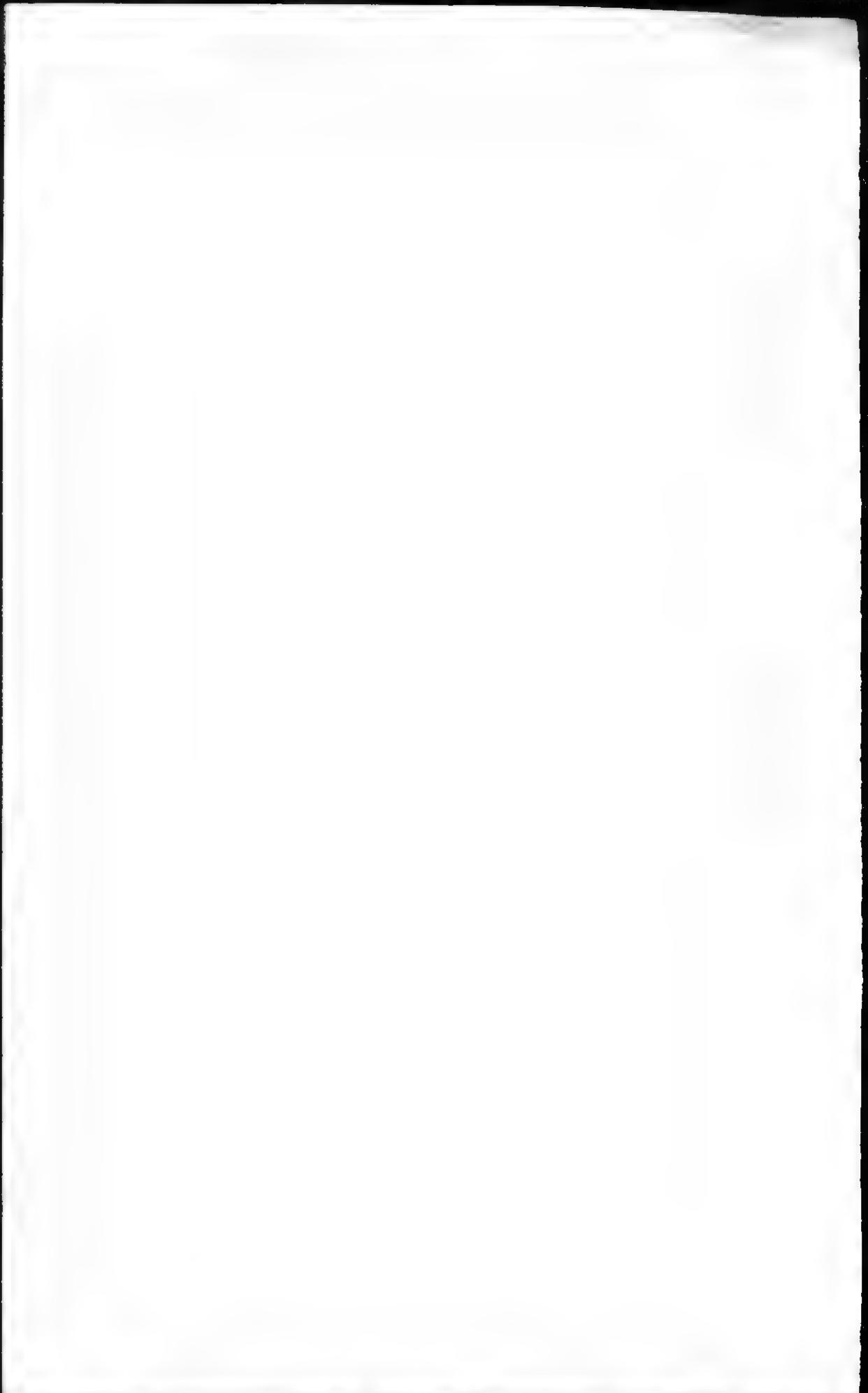
United States Court of Appeals
for the District of Columbia

FILED NOV 17 1964

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Attorneys for Appellees





STATEMENT OF QUESTIONS PRESENTED

In the opinion of appellees, the questions are:

1. (a) Whether a "finder" is exempt from D.C. Code §§ 45-1402 and 45-1407, barring an unlicensed real estate broker from recovering compensation.
1. (b) Whether appellant is barred in any event where the undisputed evidence shows that he was not merely a "finder" but actively influenced and pressed the lender to make the real estate loan commitment.
2. Whether § 45-1402 exempting one who acts "as owner" applies to appellant, where the undisputed evidence shows that when his services were undertaken and performed he was not a joint venturer with appellee landowners and had no ownership interest.
3. Whether estoppel can be invoked here, where the result would defeat the plain terms and purpose of the statute by aiding an unlicensed broker to recover compensation.

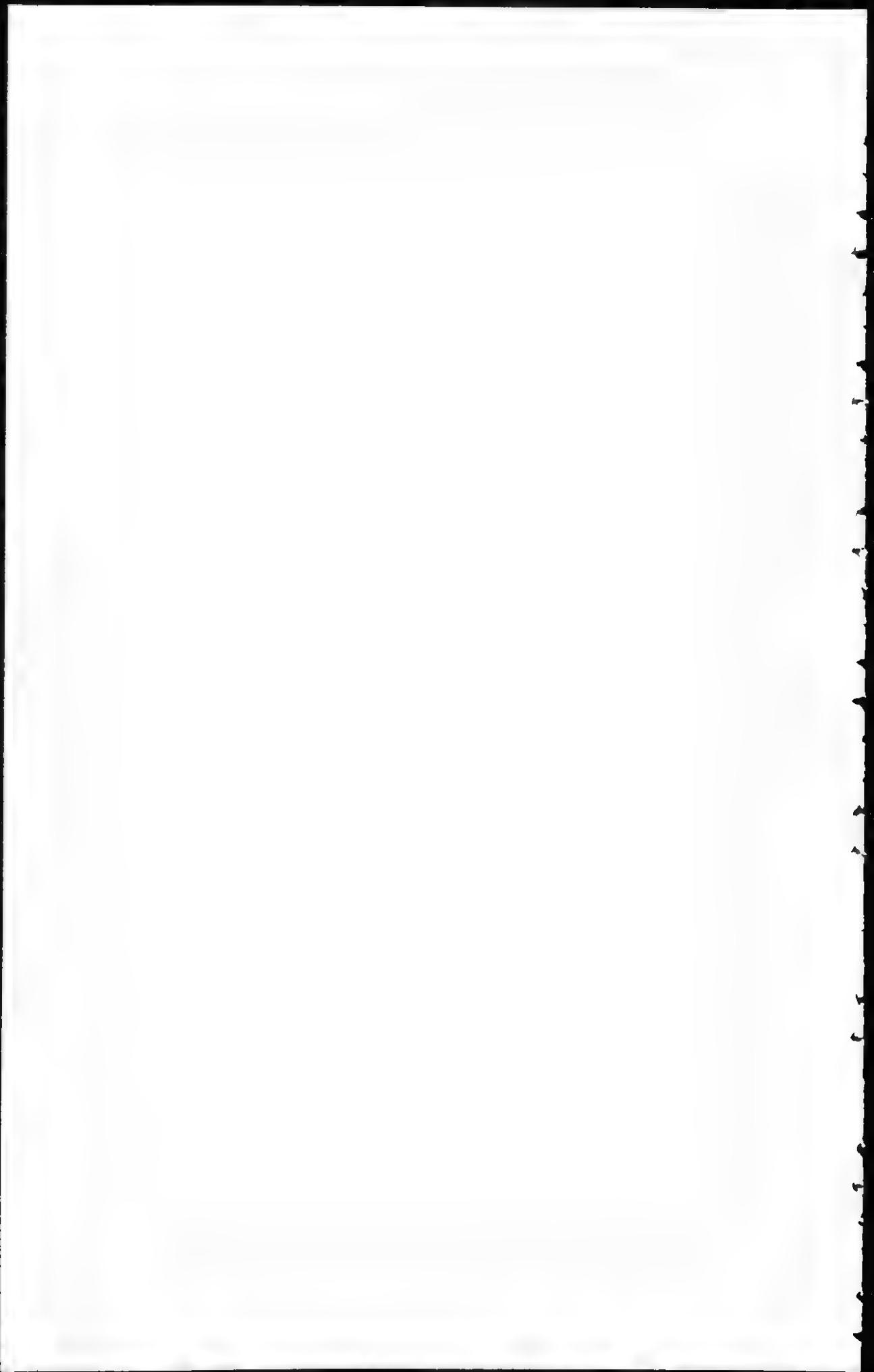


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* Authorities chiefly relied upon are marked by asterisks.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,800

I. IRVING DAVIDSON, *Appellant*,

v.

MARSHALL B. COYNE, CHARLES ROSE, EDWARD C. BALZ,
THORNTON W. OWEN, *Appellees*.

Appeal from the United States District Court for the
District of Columbia

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

Plaintiff-appellant sued to establish a one-fifth interest in appellees' joint real estate venture (Complaint, J.A. 1). Summary judgment was granted to appellees on the ground that appellant's suit seeks compensation for acting as a broker in obtaining real estate financing, and the D.C. Real Estate Brokers' License Act (D.C. Code §§ 45-1402 and 45-1407) bars his action because he was unlicensed (J.A. 5, 60).¹

¹ Appellees pleaded other defenses as well, but the motion for summary judgment relied only on the statutory bar.

Appellant asserts that when he performed his services he was already a member of appellees' joint venture and therefore an "owner", exempted from the license requirement under § 45-1402 (Brief, pp. 8, 9). But appellant's own deposition as well as the letter agreement of January 17, 1961 establish that when appellant performed his services he was not a member of the joint venture and had no ownership interest whatever.

It is undisputed that: appellees owned the land on which they wished to build a motor hotel; they orally agreed with appellant that, if he obtained satisfactory financing for the project from the Teamsters Union Central States Pension Fund, they would give him a one-fifth interest in the motor hotel (J.A. 32, 36-38). The one-fifth interest claimed by appellant was to be his compensation for obtaining the financing.

"**THE WITNESS:** Mr. Keogh, I'd like to answer that.

"I always had an understanding, from the first time that I talked with Marshall Coyne, which was very early, the first time he showed me the lot when, as I told you in my previous testimony, that he said that his group of four would move over and make me the fifth partner, an equal fifth partner, if I can open up new sources of financing." (J.A. 38)

* * * *

"**THE WITNESS:** I had an oral—both an oral and a written understanding with all the defendants that I was going to join the group and be a co-venturer with them and be a partner with them.

"**Q.** If you succeeded in securing the financing?

"**A.** If I was able to assist them in securing the financing." (J.A. 50i)

Appellant repeatedly testified to the same effect (J.A. 42-43, 44, 45, 51, 53, 55).

On January 17, 1961 the parties signed a letter agreement confirming their oral understanding (J.A. 42, 52). It

provided that if a satisfactory loan was obtained from the Pension Fund (as a result of appellant's efforts), appellees would form a new joint venture with appellant to own and operate the motor hotel, in which appellant would have a one-fifth interest. A form of "Joint Venture Agreement", to be executed when the project was completed, was attached to the letter agreement and initialled by the parties to identify it (J.A. 8; see copy attached to Motion for Summary Judgment).²

Appellant's letter to appellees, dated October 31, 1962, plainly recognized that the agreement provided for compensation only upon his obtaining the loan commitment:

"Gentlemen:

"It has been almost two years since we signed our agreement of January 17, 1961, to enter into a joint venture with respect to the Madison Hotel.

"As I read the document, I have fulfilled my part of the bargain—to obtain a commitment for a permanent first deed of trust loan on the hotel under terms and conditions acceptable to you . . ." (J.A. 14)

In order to escape the statutory bar enforced by the court below, appellant's Brief now asserts for the first time that he did not negotiate for the loan, but acted solely as a "finder"; that he merely introduced appellee Coyne to his friend Hoffa and arranged a meeting for Coyne to present the financing proposal to the Pension Fund (Brief, pp. 3, 6, 7; cf. J.A. 60).

The undisputed evidence, however, establishes that appellant actively pressed his friend Hoffa, an influential trustee of the Pension Fund, to make the loan commitment. Appellant testified: that upon his initial presentation, Hoffa told him: "Irving, that sounds like a very commendable

² Appellant's brief recognizes that the joint venture agreement form was never executed, Brief, p. 3. But the Joint Appendix erroneously indicates that the form was executed (J.A. 14).

loan, and I think that the Central States Pension Fund would entertain such a loan, especially with this caliber of men" (J.A. 41); that appellant discussed the matter with Hoffa "numerous times" (J.A. 50, 50i) and with Coyne "spent considerable time . . . discussing this matter with Mr. Hoffa" (J.A. 46iv); that he "kept Mr. Hoffa apprised" of what he was doing "in connection with securing this loan through the Teamsters Fund" (J.A. 46iv); that he complained to Hoffa "many times" about delays in processing the loan application (J.A. 46iv-47, 48i); that he complained also to Murtha, Secretary of the Fund, in "strong words" (J.A. 47, 48i); that he phoned Murtha "many times about getting some action on our application" (J.A. 48); that some of the Fund trustees were irked "because I pushed them" (J.A. 48i); that Hoffa's support was the product of "the selling that I did" (J.A. 46).

STATUTES INVOLVED

D.C. Code, Chapter 14, Real Estate and Business
Brokers' License Act, §§ 45-1401—45-1418

§ 45-1401:

. . . It shall be unlawful in the District of Columbia for any person, firm, partnership, copartnership, association, or corporation (foreign or domestic) to act as a real-estate broker, real-estate salesman, business-chance broker or business-chance salesman, or to advertise or assume to act as such, without a license issued by the Real Estate Commission of the District of Columbia.

§ 45-1402:

Whenever used in this chapter "real-estate broker" means any person, firm, association, partnership, or corporation (foreign or domestic) who, for another and for a fee, commission, or other valuable consideration, or who, with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, lists for sale, sells, exchanges, purchases, rents, or leases or offers or attempts or agrees to negotiate a sale, exchange, purchase, lease, or rental of an

estate or interest in real estate, or collects or offers or attempts or agrees to collect rent or income for the use of real estate, or negotiates or offers or attempts or agrees to negotiate, a loan secured or to be secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate. . . .

* * * *

One act for a compensation or valuable consideration of buying or selling real estate for or of another, or offering for another to buy, sell, or exchange real estate, or leasing, renting, or offering to lease or rent real estate, or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, except as herein specifically excepted, shall constitute a person, firm, partnership, copartnership, association, or corporation performing, or offering, or attempting to perform any of the acts enumerated herein, a real-estate broker. . . .

* * * *

The provisions of this chapter shall not apply to receivers, referees, administrators, executors, guardians, trustees, or other persons appointed or acting under the judgment or order of any court; or public officers while performing their official duty, or attorneys at law in the ordinary practice of their profession; nor to any person, copartnership, association, or corporation, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, or to the regular officers and employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investments therein, except as otherwise provided in this chapter.

* * * *

§ 45-1407:

No person, firm, partnership, copartnership, association, or corporation engaged in the business or acting in the capacity of a real-estate broker or a real-estate salesman, or a business-chance broker or a business-chance salesman, within the District of Columbia shall bring or maintain any action in the courts of the District of Columbia for the

collection of compensation for any services performed as a real-estate broker or a real-estate salesman or a business-chance broker or business-chance salesman, or enforcement of any contract relating to real estate without alleging and proving that such person, firm, partnership, copartnership, association, or corporation was a duly licensed real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, at the time the alleged cause of action arose.

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§ 45-1414:

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It shall be unlawful for any person, firm, partnership, association, or corporation knowingly to pay a fee, commission, or compensation to anyone for the performance within the District of Columbia of any service or act defined in this chapter as the act of a real-estate broker, real-estate salesman, business-chance broker, or business-chance salesman, who was not duly licensed as such at the time such service or act was performed: *Provided*, That this paragraph shall not apply to the division of commission by a broker licensed hereunder with a nonresident co-operating broker.

§ 45-1416:

Any person or corporation violating any provision of this chapter shall upon conviction thereof, if a person, be punished by a fine of not more than \$500, or by imprisonment for a term not to exceed six months, or both such fine and imprisonment, in the discretion of the court; and, if a corporation, be punished by a fine of not more than \$1,000. . . .

This chapter shall not be construed to release any person, partnership, association, or corporation from civil liability or criminal prosecution under the laws applying to the District of Columbia.

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SUMMARY OF ARGUMENT

1(a) The statute embodies a strong public policy barring unlicensed brokers from recovering compensation for activities in obtaining real estate loans. Even assuming, contrary to the undisputed facts, that appellant acted merely as a "finder", the statute bars his suit. The overwhelming authority so holds. The courts recognize that a contrary holding would largely defeat the statutory purpose.

1(b) In fact, as appellant's own undisputed testimony shows, he was far more than a "finder". He actively influenced and pressed the lender to make the loan commitment.

2. Appellant cannot escape the statute by contending that he acted "as owner" within the exemption of § 45-1402. When he undertook and performed his services appellant was not a member of appellees' joint venture and he had no ownership interest in the land. A broker is not exempt from the statute merely because he is to be compensated by a contingent share in the project.

3. Appellant's estoppel contention—not raised below—must be rejected. To uphold such a contention would nullify the plain terms and purpose of the statute and disregard a host of decisions.

ARGUMENT

Congress has established a strong public policy to bar unlicensed persons from acting as real estate brokers. In view of the importance of transactions relating to real estate and the evils of uncontrolled brokers' activities, strict regulation became imperative. The statute makes it unlawful to act as a real estate broker without a license, § 45-1401; it bars an unlicensed broker from bringing or maintaining an action to recover compensation, § 45-1407; and even makes it unlawful for anyone to pay compensation to an unlicensed broker, § 45-1414.

Appellant does not and cannot deny that the statute effectively bars his action, if he undertook and acted to negotiate for a real estate loan at a time when he had no present ownership interest in appellees' property. In order to get around the statute, appellant contends: that he never negotiated for the loan, but acted merely as a "finder"; that when he so acted he already had a present joint-venture ownership interest in the property; that even if he didn't, the appellees are somehow estopped from denying it.

Appellant's contentions are strained efforts to escape the statute and, if adopted, they would defeat its basic public policy of denying compensation to unlicensed brokers.

Point 1 (a). The statute bars appellant's action, even assuming arguendo that he acted only as a "finder"

Even assuming, contrary to the admitted facts, that appellant acted merely as a "finder", introducing the parties but taking no other part in bringing about the loan commitment, the statute bars this action.

§ 45-1407 provides:

"No person . . . acting in the capacity of a real-estate broker . . . within the District of Columbia shall bring or maintain any action in the courts of the District of Columbia for the collection of compensation for any services performed as a real-estate broker . . . or enforcement of any contract relating to real estate without alleging and proving that such person . . . was a duly licensed real-estate broker . . . at the time the alleged cause of action arose."

§ 45-1402 defines real estate broker as:

" . . . any person . . . who, for another and for a fee, commission, or other valuable consideration, or who, with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission, or other valuable consideration . . . negotiates or offers or attempts or agrees to negotiate, a loan secured or to

*be secured by a mortgage, deed of trust, or other encumbrance upon . . . real estate"*³ (Emphasis supplied)

The overwhelming authority holds that broker-licensing statutes such as ours preclude recovery by an unlicensed broker even though he acted only as a "finder". *Wickersham v. Harris*, 313 F. 2d 468 (C.A. 10, 1963); *Alford v. Raschiatore*, 163 Pa. Super. 635, 63 A. 2d 366 (1949); *Grammer v. Skagit Valley Lumber Co.*, 168 Wash. 677, 299 Pac. 376 (1931); *Baird v. Krancer*, 138 Misc. 360, 246 N.Y. Supp. 85 (Sup. Ct. 1930); *Corson v. Keane*, 4 N.J. 221, 72 A. 2d 314 (1950); *Massie v. Dudley*, 173 Va. 42, 3 S.E. 2d 176 (1939).

Wickersham, supra, involved a transaction governed by the D.C. Code. The trial court ruled in favor of the broker on the ground that he was only a "finder", but the Tenth Circuit Court of Appeals reversed. Even though California's similar statute had been construed as being inapplicable to a "finder", the court construed the D.C. statute according to the prevailing rule (313 F. 2d at 471).

"The rule in other states having statutes not substantially different from sections 1402 and 1407, *supra*, is that one without a license as a real estate broker who accepts employment to procure a purchaser for property, who procures a prospective purchaser, and who by introduction or otherwise brings the owner and such prospective purchaser in contact with each other is not entitled to compensation upon completion of a sale. [Citations] The essence of these cases is that to permit such a person to recover would in effect dilute the statutes and take from them much of the protection of the public interest they are designed to provide.

"Unless the contract of employment expressly or by necessary implication provides otherwise, the essential feature of a broker's conventional employment is to procure a purchaser for property ready, able, and will-

³ § 45-1402 specifically applies to a person who performs a single act within the definition (par. 5).

ing to buy at the price and on the terms of the listing or at a different price and on different terms mutually agreed upon by the owner and the purchaser. And it is not a prerequisite to the right to compensation that the broker conduct the negotiations between the parties after they have been brought into contact with each other through his efforts. Plaintiff did not have authority to submit, accept, or reject, offers or proposals. But he did have authority to procure a prospective purchaser. He did that and a contract of sale was entered into. While his authority was thus limited, he was a broker within the legislative intent and meaning of section 1402, *supra*. [Citations] To hold that plaintiff did not act as a broker would strip the statute of much of the protection of the public interest it was designed to provide. Not having a license to act as a broker or salesman, plaintiff cannot recover."

In *Alford, supra*, the court emphasized that "in probably the bulk of real estate transactions conducted by real estate agents or brokers, the agent's part amounts to little more than finding and introducing to a party who is ready and willing to sell, a prospect who is ready, willing and able to buy"; that to exclude "finders" from the statutory definition would remove a great percentage of brokers "from the regulatory purpose of the Act . . ." 63 A. 2d at 368.

The rule against unlicensed "finders" applies to real estate loan transactions no less than to real estate sales. In *Baird v. Krancer, supra*, which involved a mortgage loan, the court followed the general rule, rejecting any distinction between a "finder" and a broker.

"The essential feature of a broker's employment is to bring the parties together in an amicable frame of mind, with an attitude toward each other and toward the transaction in hand which permits their working out the terms of their agreement. They may reach that agreement without his aid or interference. Indeed, in a transaction of any magnitude, the terms would never be settled beforehand or negotiated finally by the broker. Each party would always wait until in direct contact with the other side in order that he might

drive the best bargain possible. The broker would have no opportunity to induce one party or the other to agree upon some or all of the terms, and would not be expected to do so. He would be entitled to his commission if the parties agreed upon terms originally proposed by one or the other, or agreed between themselves after the introduction.

"This does not mean that the broker has not negotiated the transaction. He does that when he builds up in the minds of the parties a desire to do the business. He never cares what the terms are, so long as the agreement occurs. If the statute does not apply to such a situation, then it is a toothless enactment. Every unlicensed broker will make the same argument that the plaintiff here has made, that he did not have to bring the parties to actual agreement upon all the details, that that phase was something for the parties themselves to determine. In short, every unlicensed broker will be enabled to carry on his business just as he did before the statute came into existence, simply by calling himself a finder, an originator, an introducer, instead of a broker. This would be an absurd limitation of the statute and one unfounded in reason or policy. A broker 'negotiates' just as much when he brings parties together in such frame of mind that they can by themselves evolve a plan of procedure, as when he himself carries on the discussion and personally induces an agreement to accept a specific provision."

Similarly in *Corson v. Keane, supra*, where the transaction was a mortgage loan and where plaintiff arranged a meeting between borrower and lender but did not participate in the negotiations, the court held plaintiff's action barred by the New Jersey statute, which is virtually identical with the D.C. statute. (The statute is set out at 72 A. 2d 314).

Appellant's brief relies on *Baldwin v. Grymes*, 232 Md. 470, 194 A. 2d 285 (1963) and *P. W. Chapman & Co., Inc. v. Cornelius*, 39 F. 2d 559 (C.A. 2, 1930). *Baldwin* is not in point; it involved no licensing statute, but the statute of frauds. In *P. W. Chapman & Co., Inc. v. Cornelius* defendant bond underwriter promised to pay plaintiff a commis-

sion, if it underwrote a bond issue on a building which plaintiff had called to its attention and on which plaintiff undertook to obtain further information. Plaintiff was hired not to negotiate a purchase or loan, but to obtain information which defendant used to evaluate the bond underwriting opportunity. The court held that the New York licensing statute did not apply to such informational service. The Court's passing reference to finder's services is dictum. *Knauss v. Gottfried Krueger Brewing Co.*, 142 N.Y. 70, 36 N.E. 867 (1894), cited in appellant's table of cases, did not involve a licensing statute and is not in point.

As shown above, the overwhelming authority, under licensing statutes such as ours, bars any suit by an unlicensed "finder".

Point I (b). Appellant was not merely a "finder": he actively pressed the Pension Fund to make the loan commitment

In fact appellant was not merely a "finder"; he did far more than introduce the parties and arrange a meeting. According to his own deposition, he presented the loan matter to Hoffa, who reacted favorably; he and Coyne "spent considerable time . . . discussing this matter with Mr. Hoffa"; he complained to Hoffa "many times" about delays and phoned the secretary of the Fund "many times about getting some action on our application"; and Hoffa's favorable reaction was the product of the "selling that I did" (J.A. 41, 48, 46iv-47, 48i, 46). On these undisputed facts, appellant was not a mere "finder". His efforts influenced and actively brought about the loan commitment.

The statutory bar applies to any unlicensed person who "negotiates, or offers or attempts or agrees to negotiate" a mortgage loan. Appellant did all of these things without a license and therefore unlawfully. Under § 45-1407, his suit for compensation cannot be maintained.

Even in California, where the licensing statute is held inapplicable to a "finder", the courts have held that activi-

ties such as appellant performed render him more than a "finder" and bar his action. *Meisner v. Reliance Steel & Aluminum Co.*, 273 F. 2d 49, 51 (C.A. 9, 1959). In *Meisner* the federal court recognized and applied the California definition of "finder", namely, one who merely introduces the parties and takes no further action. But the unlicensed plaintiff in that case actively participated in the negotiations, dealt with both parties and when the negotiations faltered, he helped revive them. The court held he was more than a finder, that he was subject to the California licensing statute and was barred from any recovery.

Thus, even under the unusual California rule, appellant's suit could not stand.

The attempt to underestimate appellant's role as that of a mere "finder" is as futile as it is transparent.

Point 2. Appellant cannot evade the statutory bar by contend-ing that he was an "owner" within the proviso of § 45-1402

Appellant further attempts to get around the statutory bar by claiming that he was an "owner" entitled to negotiate a mortgage loan without a broker's license. The seventh paragraph of § 45-1402 specifically exempts an owner from the licensing requirement.

"The provisions of this chapter shall not apply . . . to any person . . . who, as owner . . . , shall perform any of the acts aforesaid with reference to property owned . . . by them . . . "

In an attempt to bring himself within this proviso, appellant asserts that he was a member of appellees' joint venture when he first undertook to obtain a loan from the Pension Fund and at all times thereafter (Brief, p. 8).

These assertions fly in the face of the undisputed evidence. When appellant undertook to obtain the financing and thereafter when he exerted his efforts with the Pension Fund officials, he was not a member of the joint venture

which owned the land; the only members were the appellants (J.A. 6, 32). Under the agreement on which appellant relies, he was to become a member only if and when his services produced the loan. Neither at the outset nor at any time while he was performing the services was appellant a member of the joint venture which owned the land. His own testimony on this matter is unequivocal.

"...he [Coyne] said that his group of four would move over and make me the fifth partner, an equal fifth partner, if I can open up new sources of financing." (J.A. 38; emphasis supplied)

"A. We had an oral and then a written agreement that if I was able to assist them in getting the financing for this motor hotel—and it came down to a specific amount. It was finally reduced to a specific amount. If I was able to help them through my services to obtain this financing, then we would all put up a sum of money,—

"Q. How much?

"A. \$5,000 each.

"Q. Did you ever put it up?

"A. No.

"—and then we would become co-venturers" (J.A. 42-43; emphasis supplied)

"Q. What were you to receive for these services that you were performing?

"A. Mr. Keogh, I was to become a one-fifth partner with the four principals.

"Q. In this—

"A. Yes. These four principals were the owners of the land." (J.A. 44)

"THE WITNESS: I had an oral—both an oral and a written understanding with all the defendants that I was going to join the group and be a co-venturer with them and be a partner with them.

"Q. If you succeeded in securing the financing?

"A. If I was able to assist them in securing financing." (J.A. 50i; emphasis supplied)*

The letter agreement of January 17, 1961 confirmed that appellant's contemplated membership in the joint venture was prospective. It clearly stated: "We propose to enter into a joint venture agreement, of which you and we will be parties", contingent on certain future events, namely, disbursement of the loan and completion of construction (J.A. 6; emphasis supplied). Appellant's own letter of October 31, 1962 requested compliance with "our agreement of January 17, 1961, to enter into a joint venture with respect to the Madison Hotel" (J.A. 14-15; emphasis supplied).

Of course, mere membership in a joint venture does not relieve a broker from the license requirement. § 45-1402 does not exempt joint venturers; it excepts persons who negotiate "as owner . . . with reference to property owned . . . by them." But appellant was neither joint venturer nor owner when he performed his services. The realty was owned exclusively by appellees; appellant had no ownership interest whatever (J.A. 6, 32, 44, 52).

If the proviso of § 45-1402, exempting activities of an owner, were to be construed as embracing appellant's activities, the basic statutory purpose of regulating real estate brokers would be defeated. Any unlicensed person, simply by arranging for compensation in the form of a contingent share in the project, could evade the regulation.

Such attempts to undermine the licensing statutes have been consistently rejected. *Wegmann v. Mannino*, 253 F. 2d

* Appellant asserts that there is a question of fact as to "whether the joint venture began at the time that the oral agreement was made . . ." (Brief, p. 8). But elsewhere he admits that under the oral agreement "he would become a member of a joint venture which was to build the motor hotel on this site, and he was to have a one-fifth interest" (Brief, p. 2; emphasis supplied). There is no evidence whatever and it is absurd to suggest that appellees at the outset gave appellant a present membership in the joint venture which owned valuable land.

627 (C.A. 5, 1958); *Solomon v. Goldberg*, 11 N.J. Super. 69, 78 A. 2d 118 (1950); *Weber v. Tonini*, 151 Cal. A. 2d 168, 311 P. 2d 132 (1957).

In *Wegmann, supra*, defendant was to purchase land and plaintiff was to subdivide and sell it for 25 per cent of defendant's profits. Under the Florida statute, similar to ours, the Fifth Circuit Court of Appeals held that, even if plaintiff was a joint venturer, he was no owner and, being unlicensed, could not recover. In language strikingly applicable to the instant case, the court held (253 F. 2d at 630-631):

"Appellant contends that the Court erred in failing to find that the terms of the contract were sufficient to show an agreement of joint venture. If the contract could be construed as constituting the parties joint adventurers this would not of itself avail appellant anything, because the statute makes no exception as to joint ventures as such; but, says appellant, if this is a joint venture, then this would make appellant an 'owner' of the property and an owner is exempt under Section 475.01, *supra*, footnote 1. We think there is no magic in the term 'joint venture.' This may or may not be one, but whether it is or not is not decisive of anything. No case is cited to the effect that every joint venture as to the sale of real estate makes of the joint venturers joint owners of the real estate. Such a contention must not only be made but it must be supported if appellant is to have any comfort from it."

In *Solomon v. Goldberg, supra*, defendant owner agreed to "go partners" with plaintiff. If plaintiff found a buyer, he was to receive one-half of defendant's net profit. The Court denied recovery, because the plaintiff had no broker's license:

"The measure of his compensation upon a profit-sharing basis, as distinct from a percentage commission, does not save the contract from classification as a broker agreement. [Citation]

"Plaintiff maintains R. S. 45:15-4, N.J.S.A., applies. This section excepts from the licensing provisions ' *** any person, firm, partnership, association or corporation who, as a bona fide owner or lessor, shall perform any of the aforesaid acts with reference to property owned by him * * *.' The proofs established the property was owned by defendants through their nominee, the personal holding corporation. Plaintiff had no ownership in the property and manifestly he cannot bring himself within this exception. [Citations]"

In *Summers v. Hoffman*, 341 Mich. 686, 69 N.W. 2d 198 (1955), cited by appellant (Brief, p. 8), the trial court specifically found that from the outset plaintiff was a member of a joint venture acquiring and developing land and that title to one of the two acquired parcels was taken jointly by plaintiff and defendants. The Michigan Supreme Court held therefore that plaintiff was an owner within the statutory exception. Whether or not *Summers* is reconcilable with *Wegmann*, it is clearly distinguishable from the case at bar. Here appellant's activities were performed at a time when he was neither a member of appellees' joint venture nor an owner of the land.

Similarly in *Lloyd v. Wiseman*, 368 S.W. 2d 303 (Tenn. App. 1963), also cited by appellant (Brief, p. 9) the court found that plaintiff was a partner or joint venturer from the outset in an enterprise engaged in acquiring and selling real estate.

In the present case it is undisputed and appellant's own testimony shows that neither at the outset nor at the time of his activities with the Pension Fund was he a member of appellees' joint venture or an owner of the land.

Point 3. To apply appellant's theory of estoppel would nullify the act and purpose of Congress

Finally appellant attempts to escape the statutory bar by invoking a theory of estoppel—a contention not raised below (see J. A. 60-61). He argues that appellees have

received a benefit from his services and should be estopped from pleading the statute (Brief, p. 10). To apply any such theory of estoppel would emasculate the Act and defeat its basic public policy.

As noted above, the purpose of the Act is to regulate activities of real estate brokers through a licensing system. The Real Estate Brokers License Act was enacted in 1937 after many years of Congressional investigation and numerous reports.⁵ The Senate Committee Report on the bill which was finally enacted emphasized:

“Its essential feature is provision for the licensing of all real-estate brokers and salesmen in the District . . .”
(S. Rept. 1173, 75th Cong., 1st Sess.)

The Act provides as its primary enforcement device, that one who acts as a broker without a license shall not “bring or maintain any action . . . for the collection of compensation . . .” (§ 45-1407). It even makes it “unlawful for any person . . . knowingly to pay . . . compensation” to an unlicensed broker (§ 45-1414).⁶ It would be difficult for Congress to express in stronger and plainer language its determination that if a person acts as a real estate broker in the District of Columbia without a license, the courts are not to aid him in recovering compensation.

Most states have adopted licensing statutes regulating real estate brokers. The D.C. statute, however, is among the most stringent, with its express prohibition against any suit for compensation. This kind of statutory bar is con-

⁵ E.g., see 71st Cong., 2d Sess., H. Rept. 952 and S. Rept. 669, 72 Cong. Rec. 9352 (bill passed); 72d Cong., 1st Sess., 75 Cong. Rec. 5971 (bill passed); 73rd Cong., 2d Sess., S. Rept. 285, 78 Cong. Rec. 8455 (bill passed); 74th Cong., 1st Sess., S. Rept. 92, 79 Cong. Rec. 1852 (bill passed).

⁶ The Act declares it unlawful to act as a real estate broker without a license, § 45-1401, and prescribes criminal penalties, § 45-1416. But the Committee Report explained that criminal sanctions alone were inadequate to protect the public interest and to assure compliance with the essential license requirement.

sistently enforced as a matter of course, even though others benefit from the broker's unlicensed activities. *Anno.*, 169 A.L.R. 767, 775. The D.C. statute goes still further; as previously noted, it prohibits any person from paying compensation to an unlicensed broker.⁷

The force of the public policy embodied in the D.C. statute has received clear judicial recognition. In *Wickersham v. Harris, supra*, 313 F. 2d at 471, the Tenth Circuit Court of Appeals held:

"Considered as a whole, the Act constitutes an exercise of the police power for the protection of the public interest and therefore a contract for the payment of compensation to an unlicensed broker or salesman for services rendered as such is not merely unenforceable. It is void."

The Federal Courts have repeatedly barred an unlicensed broker from recovering compensation—in some cases where the statute is less severe than ours. *Schultz v. Palmer, Welloct Tool Corp.*, 207 F. 2d 652 (C.A. 3, 1953); *Meisner v. Reliance Steel & Aluminum Co., supra*, 273 F. 2d 49 (C.A. Calif. 1959); *Reed v. Kelly*, 177 F. 2d 473, 475 (C.A. 7, 1949) ("... enforcement of plaintiff's claimed contract is forbidden by the positive law of Wisconsin"); *Stahl v. Township of Teaneck*, 162 F. Supp. 661 (D. N.J. 1958); *Bauer v. Henslee*, 84 F. Supp. 811 (E.D. Ark. 1949); *Schoettle v. Sarkes Tarzian, Inc.*, 191 F. Supp. 768 (E. D. Pa. 1961); *Harris v. The Kent House Corp.*, 127 F. Supp. 44 (D. Conn. 1954) ("It does seem inequitable to allow one who has sought out a broker outside the state to negotiate a sale for him to escape paying for his services by hiding behind the license statute, but presumably the legis-

⁷ In *Rheinberger v. Security Life Insurance Co.*, 47 F. Supp. 196 (N.D. Ill. 1942), involving a similar prohibition, the court held at p. 201:

"Under that section no person shall pay any commission to any person for negotiating contracts of real estate other than brokers licensed under the ordinance. This court cannot direct the trustee to commit an illegal act."

lature felt that the evils eliminated outweighed such occasional inequity").

The law reports contain literally hundreds of cases denying claims of unlicensed brokers, including cases where the statute is less stringent than ours; see American Digest System, "Brokers," key number 42.

The only case cited by appellant in support of his estoppel theory is *Lloyd v. Weisman*, *supra*, 368 S.W. 2d 303 (Tenn. App. 1963). But, as shown above in Point 2, that decision turned on the fact that plaintiff from the outset was a member of a partnership or joint venture dealing with property of which he was an owner and thus expressly exempt under the statute. The court's statement as to estoppel was dictum.

To apply any theory of estoppel in the case at bar would be to set aside the terms and purpose of the statute as enacted by Congress.

Respectfully submitted,

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